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Administration of justice at the United Nations

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Administration of justice at the United Nations

Report of the Secretary-General

Summary

By its resolutions 61/261, 62/228 and 63/253, the General Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice for the United Nations, which commenced operation on 1 July 2009. Since establishing the new system of administration of justice, the Assembly has recognized the achievements of the new system, acknowledged its evolving nature and continued to monitor it to ensure that it continues to achieve its mandate

In the present report, the Secretary-General provides statistics on the functioning of the new system of administration of justice for the calendar year 2011 as requested. During this period, the Management Evaluation Unit received 952 requests for review and closed or resolved 520 matters. The Office of Staff Legal Assistance received 702 new cases and closed or resolved 526 cases. The offices representing the Secretary-General received 282 new cases, and were counsel of record in 219 of the judgements issued by the United Nations Dispute Tribunal. The Office of Legal Affairs was counsel of record for the Secretary-General in 80 of the judgements issued by the United Nations Appeals Tribunal.

During 2011, the Dispute Tribunal received 282 new cases and disposed of 272 cases. It issued 219 judgements and 672 orders, held 249 hearings and referred nine cases to the Mediation Division of the Office of the United Nations Ombudsman and Mediation Services.

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* A/67/150.

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In 2011, a total of 96 new appeals were filed with the United Nations Administrative Tribunal. The Administrative Tribunal convened three sessions, rendered 88 judgements and issued 44 orders.

During its sixty-sixth session, the General Assembly identified a number of areas in which the new system required strengthening, and in resolution 66/237 it requested the Secretary-General to report on a number of issues in a single, comprehensive report on the administration of justice to be submitted at its sixty-seventh session. The present report includes the consolidated response to that request.

The Secretary-General indicated in his report on the administration of justice to the General Assembly at its sixty-sixth session (A/66/275 and Corr.1) that there was a need for strengthening in several key areas in order to maintain the current pace of work and to implement all of the mandates by the Assembly for the new system. The Assembly strengthened certain areas of the system at its sixty-sixth session, and the Secretary-General considers that certain areas, namely the Tribunals, the Office of Staff Legal Assistance and the Management Evaluation Unit, should be strengthened at this time. As a result, the present report contains a request for additional resources amounting to $1,688,300 net ($1,793,900 gross) for the programme budget for the biennium 2012-2013 under section 1, Overall policymaking, direction and coordination ($1,645,400), section 29D, Office of Central Support Services ($42,900), section 29G, Administration, Nairobi ($11,600) and under section 37, Staff assessment ($105,600), to be offset by a corresponding amount under income section 1, Income from staff assessment.

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Abbreviations

DESA	Department of Economic and Social Affairs
DFS	Department of Field Support
DGACM	Department for General Assembly and Conference Management
DM	Department of Management
DPA	Department of Political Affairs
DPI	Department of Public Information
DPKO	Department of Peacekeeping Operations
DSS	Department of Safety and Security
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
ICAO	International Civil Aviation Organization
ICSC	International Civil Service Commission
ILO	International Labour Organization
ITSD	Information Technology Services Division
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilization Mission in Haiti
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OICT	Office of Information and Communications Technology
OIOS	Office of Internal Oversight Services
OLA	Office of Legal Affairs
ONUB	United Nations Operation in Burundi
OPPBA	Office of Programme Planning, Budget and Accounts
UNAMI	United Nations Assistance Mission for Iraq
UNAT	United Nations Appeals Tribunal
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDCP	United Nations Drug Control Programme
UNDP	United Nations Development Programme

UNDT	United Nations Dispute Tribunal
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UN-Habitat	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHQ	United Nations Headquarters
UNICEF	United Nations Children's Fund
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in the Sudan
UNOG	United Nations Office at Geneva
UNON	United Nations Office at Nairobi
UNOPS	United Nations Office for Project Services
UNOV	United Nations Office at Vienna
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTSO	United Nations Truce Supervision Organization
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
WFP	World Food Programme

I. Overview

1. By its resolutions 61/261, 62/228 and 63/253, the General Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of both managers and staff members.

2. The system has two tribunals, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which are staffed by professional judges and supported by registries in Geneva, Nairobi and New York. The Office of Administration of Justice provides substantive, technical and administrative support to the Dispute Tribunal and the Appeals Tribunal through their Registries, assists staff members and their representatives in pursuing claims and appeals through the Office of Staff Legal Assistance and provides assistance, as appropriate, to the Internal Justice Council.

3. Before proceeding to the Tribunals, staff members wishing to contest non-disciplinary matters must request a management evaluation either from the Management Evaluation Unit in the Department of Management at United Nations Headquarters, or from the respective entity performing that function in the separately administered funds and programmes. The management evaluation function permits management to deal with requests if possible and avoid unnecessary litigation.

4. The Secretary-General is represented at the Dispute Tribunal by the Administrative Law Section of the Office of Human Resources Management for matters brought by staff serving in the Secretariat and certain other United Nations entities, as well as by legal and human resources staff in UNEP, UN-Habitat, the United Nations Office at Geneva, the United Nations Office at Nairobi and the United Nations Office at Vienna. The Secretary-General is represented at the Dispute Tribunal by similar units for matters brought by staff serving in the separately administered funds and programmes and is represented at the Appeals Tribunal by the Office of Legal Affairs for staff serving in the Secretariat and the funds and programmes.

5. The present report provides statistics on the functioning of the system of administration of justice for 2011 and responds to the specific requests of the General Assembly contained in resolution 66/237 for consideration at its sixty-seventh session. It also contains requests for resources in relation to the Dispute Tribunal, the Management Evaluation Unit and the Office of Staff Legal Assistance.

II. Review of the formal system of justice

A. Management Evaluation Unit

6. The Management Evaluation Unit is located in the Office of the Under-Secretary-General for Management and is the first step in the formal system of administration of justice. The core functions of the Unit are to: (a) carry out timely management evaluations of administrative decisions contested by staff members

relating to their contracts of employment and/or terms and conditions of appointment; (b) assist the Under-Secretary-General for Management in providing timely and reasoned responses to management evaluation requests; and (c) assist the Under-Secretary-General in realizing managerial accountability.

7. In 2011, the Management Evaluation Unit received 952 requests for management evaluation. The management evaluation process provides the Administration with opportunities to (a) identify poor decisions in a timely manner, thereby preventing unnecessary litigation before the Dispute Tribunal; and (b) provide lessons learned for decision makers, resulting in significant cost savings to the Organization. Of the requests received and closed by the Unit in 2011, 33 per cent were settled through resolution efforts either by the Unit itself or also involving informal resolution through the Office of the United Nations Ombudsman and Mediation Services.

8. In 2011, in 93 per cent of the requests submitted to the Management Evaluation Unit that were not resolved by mutual agreement between the staff member and the Organization, the contested decision was upheld by the Secretary-General following a recommendation by the Unit that the decision was consistent with the rules and jurisprudence of the Organization.

9. In conformity with the decision of the General Assembly to establish a transparent system of administration of justice, where the Management Evaluation Unit has recommended that a contested administrative decision be upheld, a written reasoned response is sent to the staff member concerned setting out the basis for the management evaluation, including a summary of the relevant facts of the request and the comments on the request provided by the decision maker or makers, the relevant internal rules of the Organization, relevant jurisprudence of the Dispute Tribunal and Appeals Tribunal, an explanation of why the Unit considered that the contested decision comported with the rules and the final decision of the Secretary-General.

10. Unless they agree on a settlement with the Organization, and subsequent to the conclusion of the management evaluation process, staff members have the statutory right to take their complaint against the upheld administrative decision to the Dispute Tribunal (General Assembly resolution 62/228, para. 51). The Management Evaluation Unit has experienced that staff members who have sought recourse to the formal system because of a perceived lack of transparency or respect for them in the administrative decision-making process are more likely to decide not to pursue their statutory recourse to the Dispute Tribunal following management evaluation, as they perceive the process to be objective and fair. The written reasoned response provided to staff members at the conclusion of the management evaluation process is an important means of establishing the credibility of the process. Of the substantive management evaluations provided in 2011, 52 per cent of decisions which were upheld upon recommendation of the Unit were not challenged by staff members before the Dispute Tribunal.

11. In 2011, in 87 per cent of the cases considered by the Dispute Tribunal following management evaluation, the disposition of the case by the Dispute Tribunal was the same as that recommended by the Management Evaluation Unit. Although there are issues of interpretation of internal laws that have yet to be determined by the Appeals Tribunal, and although the Unit has limited fact-finding capability, the situation is indicative of the objectivity and accuracy of the Unit.

12. From its inception on 1 July 2009 to 31 December 2011, the Management Evaluation Unit received a total of 1,563 management evaluation requests, including 184 requests in 2009, 427 in 2010 and 952 in 2011. Of the 1,563 requests received, the Unit closed 1,115 requests by 31 December 2011. As at 31 December 2011, it had recommended compensation with regard to 33 management evaluation requests (3 per cent of closed requests).

1. Statutory time limits

13. Management evaluations are required to be completed within a limit of 30 calendar days for Headquarters staff and 45 calendar days for staff at offices away from Headquarters after the submission of such a request (resolution 62/228, para. 54). Deadlines may only be extended in cases where the matter has been referred to the Office of the United Nations Ombudsman under conditions specified by the Secretary-General or by the Dispute Tribunal for a period of up to 15 days in exceptional circumstances when both parties to a dispute agree (resolution 66/237, para. 32).

14. The Advisory Committee on Administrative and Budgetary Questions has stated that every effort should be made to resolve cases before staff members resort to litigation and that the management evaluation function is an important opportunity to do so (A/65/557, para. 16). In cases where the Management Evaluation Unit takes the view that the contested decision does not comport with the internal laws of the Organization, and the Under-Secretary-General for Management endorses consideration of a settlement, the Unit seeks to facilitate resolution of the request. The experience of the Unit is that such resolution involves extensive communication with the staff member and the decision maker and frequently exceeds the statutory time frame. However, thus far, no request to the Dispute Tribunal for a 15-day extension of the deadline has been made by either the staff requesting management evaluation or the Organization.

2. Caseload and resource needs of the Management Evaluation Unit

15. The caseload of the Management Evaluation Unit has been steadily increasing since 1 July 2009, reaching 952 management evaluation requests in 2011. Between 1 January and 30 June 2012, the Unit has already received 535 management evaluation requests, which indicates that the caseload may exceed 1,000 requests in 2012.

16. The administration of justice 30- and 45-day timelines are applicable only to the management evaluation process. These timelines support the swift resolution of disputes, but are extremely hard to meet for the Management Evaluation Unit, bearing in mind the high number of requests and resulting workload and taking into account the resources at its disposal.

17. The number of requests increased by 123 per cent from 2010 to 2011. Approximately 30 per cent of all requests come from staff working in peacekeeping; however, the Management Evaluation Unit receives no resources from the peacekeeping support account. **Accordingly, the Secretary-General recommends the approval of one additional Legal Officer post at the P-3 level for the Management Evaluation Unit for six months to be funded from the peacekeeping support account.**

B. United Nations Dispute Tribunal

1. Composition of the United Nations Dispute Tribunal

18. On 16 April 2012, the General Assembly held elections to fill vacancies on the Dispute Tribunal and elected the following judges:

(a) Ms. Memooda Ebrahim-Carstens (Botswana), full-time judge, for a second term of office beginning on 1 July 2012 and ending on 30 June 2019;

(b) Mr. Goolam Hoosen Kader Meeran (United Kingdom of Great Britain and Northern Ireland), half-time judge, for a second term of office beginning on 1 July 2012 and ending on 30 June 2019;

(c) Ms. Alessandra Greceanu (Romania), ad litem judge, for a term of office beginning on 16 April 2012 and ending on 31 December 2012.

19. At the same meeting, the General Assembly decided to extend the terms of office of the incumbent ad litem judges of the Dispute Tribunal, Mr. Jean-François Cousin (France) and Ms. Nkemdilim Amelia Izuako (Nigeria), until 31 December 2012.

20. At the time of the preparation of the present report, the composition of the Dispute Tribunal was as follows:

(a) Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi;

(b) Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York;

(c) Judge Thomas Laker (Germany), full-time judge based in Geneva;

(d) Judge Goolam Hoosen Kader Meeran (United Kingdom), half-time judge;

(e) Judge Coral Shaw (New Zealand), half-time judge;

(f) Judge Jean-François Cousin (France), ad litem judge based in Geneva;

(g) Judge Nkemdilim Amelia Izuako (Nigeria), ad litem judge based in Nairobi;

(h) Judge Alessandra Greceanu (Romania), ad litem judge based in New York.

2. Election of the President

21. On 2 July 2012, Judge Vinod Boolell was elected President of the Dispute Tribunal for one year ending on 30 June 2013.

3. Plenary meetings

22. The judges of the Dispute Tribunal held one plenary meeting in 2011, from 27 June to 1 July. In 2012, the Dispute Tribunal held one plenary meeting from 23 to 27 April and has scheduled a second plenary meeting from 15 to 19 October.

4. General activity of the United Nations Dispute Tribunal

23. As at 1 January 2011, the Dispute Tribunal had 259 cases pending, including 110 cases from the former system of administration of justice. During the reporting

period, the Dispute Tribunal received 282 new cases (including five remanded cases and 11 inter-registry transfers) and disposed of 272 cases (including 11 inter-registry transfers). This is a significant increase over 2010, wherein the Dispute Tribunal received 162 new cases (including six cases that were remanded). As at 31 December 2011, the Dispute Tribunal had 269 cases pending, of which 30 were from the former system.

24. Of the 282 cases received during the reporting period, 166 originated from the Secretariat (excluding peacekeeping and political missions); 61 originated from peacekeeping and political missions; and 55 originated from other United Nations entities, including UNHCR, UNDP and UNICEF.

5. Cases transferred to the Dispute Tribunal from the former system of administration of justice

25. On 1 July 2009, 169 cases that had been pending before the Joint Appeals Board or the Joint Disciplinary Committee were transferred to the Dispute Tribunal. On 1 January 2010, 143 cases that had been pending before the United Nations Administrative Tribunal were transferred to the Dispute Tribunal.

26. As at 1 January 2011, 110 of these cases remained pending before the Dispute Tribunal, of which 22 were from the Joint Appeals Board or Joint Disciplinary Committee (including three remanded cases) and 88 from the Administrative Tribunal. During 2011, the Dispute Tribunal disposed of 78 of these transferred cases, of which 16 were from the Joint Appeals Board or Joint Disciplinary Committee (including three remanded cases) and 62 were from the Administrative Tribunal. In addition, two former Administrative Tribunal cases were closed by inter-registry transfer from the New York Registry to the Geneva Registry, where they were registered as new cases and subsequently disposed of. As at 31 December 2011, 30 transferred cases were pending: six cases from Joint Appeals Board or Joint Disciplinary Committee (including one remanded case) and 24 from the Administrative Tribunal.

6. Number of judgements, orders and hearings

27. During 2011, the Dispute Tribunal issued 219 judgements and 672 orders and held 249 hearings.

7. Cases referred to the Mediation Division

28. In addition to four cases carried over from 2010, during 2011 the Dispute Tribunal identified nine cases suitable for mediation and referred them to the appropriate mediation office. Mediation was successful in nine cases and unsuccessful in two cases. As at 31 December 2011, two cases remained in mediation.

8. Subject matter of cases before the Dispute Tribunal

29. The nature of the cases received during the reporting period may be divided into six main categories: (a) appointment-related matters, (b) benefits and entitlements, (c) classification, (d) disciplinary matters, (e) separation from service; and (f) other.

30. Of the 282 cases received during the reporting period, 114 related to appointment, 23 to benefits and entitlements, 2 to classification, 31 to disciplinary matters, 70 to separation from service and 42 to other matters.

9. Issues relating to staffing of the Dispute Tribunal and its Registries

31. The Dispute Tribunal continues to have a heavy volume of cases. Not only has there been a steady increase in the rate of newly registered cases since January 2011, but the Dispute Tribunal has been faced with more applications for suspension of action, which must be considered within the statutory five-day time frame.

32. Despite the continued assistance of the ad litem judges, whose terms of office were extended until 31 December 2012, and the work of the half-time judges, the length of time needed to complete a case and issue a judgement is increasing primarily as a result of the additional number of cases filed. If reductions are made in the judicial capacity of the Dispute Tribunal, it will no longer be able to manage its caseload. It is essential to have two full-time judges at each duty station. Otherwise, there is a real danger that a new backlog would emerge, causing delays in the disposal of cases, which was one of the most criticized shortcomings of the former justice system.

33. Having only one full-time judge at each duty station has other disadvantages, which were detailed in the previous report of the Secretary-General (A/66/275 and Corr.1). A few of the main concerns are highlighted below. One of the cornerstones of the new system is a decentralized tribunal, which can be accessed by staff at all duty stations. The whole point of having a decentralized tribunal would be defeated if one location had to stop functioning owing to the absence of its sole judge, for example, in cases of leave, sickness or resignation. Similarly, the recusal of a judge at one location would automatically entail the transfer of the case to another location farther away from the applicant. Three-judge panels can be established in an effective way only when at least two judges are present in each tribunal location. Furthermore, there is a statutory requirement for applications for suspension of action to be disposed of in five days, which would be almost impossible for a single judge to achieve without compromising the disposal of substantive applications. Finally, the President of the Dispute Tribunal, who has to direct the work of the Tribunal and the Registries, relies on the presence and support of the other judge at his or her location during his or her term of office to maintain the flow of cases.

34. In addition to their primary function of rendering judgements, the judges perform numerous other duties. They are responsible for the case management of all cases, from the receipt of an application to final judgement. This involves the holding of hearings, which may last for several days, and issuing a large number of orders, requiring considerable preparation time. They must consider applications for suspension of action within a strict time limit.

35. The decentralized nature of the Dispute Tribunal requires that the judges meet on a regular basis to discuss issues of common concern and to ensure the harmonization of practices among the three Registries. Time must be devoted to plenary meetings, at which the Dispute Tribunal considers and issues practice directions to provide guidance to parties appearing before the Dispute Tribunal, drafts amendments to the rules of procedure for submission to the General Assembly, considers matters relating to the functioning of the Dispute Tribunal and addresses matters referred by the Assembly for consideration by the judges.

36. For all these reasons, it is essential that the ad litem judges and their current legal and administrative supporting staff be allowed to continue for another year, until 31 December 2013.[1]

37. **It is therefore recommended that the General Assembly extend the mandate of the three sitting ad litem judges of the Dispute Tribunal for one year and approve, under general temporary assistance, three Legal Officer (P-3), two General Service (Other level) and one General Service (Local level) positions to support the ad litem judges for the same period.**

10. Matters not related to staffing

(a) Courtrooms

38. In resolution 66/237, the General Assembly reiterated the need for the construction of fully equipped courtrooms for the Tribunals and requested the Secretary-General to provide functional courtrooms with adequate facilities, as a matter of urgency. Accordingly, provision for construction and outfitting has been included in section 34 of the programme budget for the biennium 2012-2013.

39. For the past two years, the judges in New York have used the temporary courtroom located in the temporary premises of the Office of Administration of Justice. As that Office will be relocated in the first half of 2013, discussions are under way to provide the Dispute Tribunal with new courtroom space. In Geneva, arrangements are being made to construct two interpretation booths adjacent to the current courtroom. At the same time, discussions are under way to provide the Dispute Tribunal with new permanent premises upon completion of the strategic heritage plan, which would include a new permanent courtroom. In Nairobi, the construction of a permanent, dedicated courtroom near the new permanent offices of the Dispute Tribunal is well under way.

(b) Travel and communications

40. In accordance with the decision of the General Assembly that the new system of administration of justice should be decentralized, the Dispute Tribunal and its Registries are located in Geneva, Nairobi and New York. In order to harmonize its practices and serve as a homogenous Tribunal, the Tribunal Judges and Registries need to communicate on a regular basis. This is done mostly by telephone, e-mail and videoconferencing and only intermittently in person.

41. The Judges hold regular biweekly meetings by videoconference, with one of the half-time judges participating whenever possible by telephone and the other half-time judge being able to participate only when she is present at a duty station, in view of the time difference between New York and New Zealand where she resides. These meetings are of relatively short duration, in view of the time difference between the different duty stations and because of the significant costs associated with videoconferencing, which have to be borne within existing resources. Nevertheless, the regularity of these meetings has resulted in a greater level of communication among the judges and has proved invaluable in maintaining

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[1] The need for the continued assistance of the ad litem judges and their supporting staff was also noted by the Internal Justice Council (see A/67/98, paras. 20-22).

consistency of practices. The meetings allow the Dispute Tribunal to make important decisions with regard to its work.

42. Between July 2009 and June 2012 the Dispute Tribunal has held six plenary meetings. These meetings, which last a full week, allow the Judges to meet in person and have in-depth discussions on a range of legal issues; decide on practice directions which are issued to advise parties of the procedures expected by the Dispute Tribunal; consult with stakeholders on important issues affecting the formal system of justice such as proposed amendments to the Statute and Rules of Procedure of the Tribunal; and generally to attend to housekeeping issues. In light of the experience of the past three years, the Dispute Tribunal is of the view that two plenary meetings per year are required as it is much more difficult to conduct discussions on these important issues by e-mail, telephone or videoconferencing.

C. United Nations Appeals Tribunal

1. Composition of the Appeals Tribunal

43. On 23 February 2012, the General Assembly held elections to fill vacancies on the Appeals Tribunal, which had occurred on 30 June 2012, and elected the following judges:

(a) Mr. Jean Courtial (France) for a second term of office beginning on 1 July 2012 and ending on 30 June 2019;

(b) Mr. Richard Lussick (Samoa), for a term of office beginning on 1 July 2012 and ending on 30 June 2019;

(c) Ms. Rosalyn Chapman (United States of America), for a term of office beginning on 1 July 2012 and ending on 30 June 2019.

44. At the time of the preparation of the present report, the composition of the Tribunal was as follows:

(a) Judge Luis María Simón (Uruguay);

(b) Judge Inés Weinberg de Roca (Argentina);

(c) Judge Mary Faherty (Ireland);

(d) Judge Sophia Adinyira (Ghana);

(e) Judge Jean Courtial (France);

(f) Judge Richard Lussik (Samoa);

(g) Judge Rosalyn Chapman (United States).

2. Election of the President and Vice-Presidents

45. On 29 June 2012, the Appeals Tribunal elected its Bureau for the term of 1 July 2012 to 30 June 2013, with Judge Simón to serve as President; Judge Weinberg de Roca as First Vice-President; and Judge Faherty as Second Vice-President.

3. Working sessions

46. The Appeals Tribunal held three working sessions in 2011: two in New York (28 February to 11 March and 10 to 21 October) and one in Geneva (27 June to 8 July).

4. General activity of the Appeals Tribunal

47. In 2011, the Appeals Tribunal received 96 new appeals, rendered 88 judgements, issued 44 orders and disposed of 102 appeals, including four cross-appeals.

48. The 96 new appeals included 89 appeals of Dispute Tribunal judgements and orders (58 brought by staff members and 31 brought by the Secretary-General), five appeals of decisions of UNRWA, including three appeals of UNRWA Dispute Tribunal orders or judgements, one from a decision of ICAO, and one from a decision of the International Maritime Organization.

Outcome of disposed cases

49. Of the 88 judgements, 72 related to Dispute Tribunal judgements or orders, four to United Nations Joint Staff Pension Board decisions, two to decisions of the UNRWA Commissioner-General, one to an ICAO decision, one to a request for interpretation of an earlier Appeals Tribunal judgement, six to requests for revision of earlier judgements and two to requests for revision of judgements issued by the former Administrative Tribunal.

50. Of the appeals related to Dispute Tribunal decisions, 53 were brought by staff members and 27 were brought on behalf of the Secretary-General.[2] Of the 53 appeals brought by staff members, the Appeals Tribunal affirmed the Dispute Tribunal in 45, reversed it in two and remanded six to the Dispute Tribunal. Of the 27 appeals brought by the Secretary-General, the Appeals Tribunal affirmed the Dispute Tribunal in eight, reversed it in 17 and remanded two to the Dispute Tribunal.

51. The Appeals Tribunal upheld three decisions of the Pension Board and overturned it in one. It upheld the Commissioner-General in one appeal and set his other decision aside. The ICAO appeal was rejected for want of jurisdiction.

52. As at 31 December 2011, 93 appeals were pending before the Appeals Tribunal.

5. Issues related to the functioning of the United Nations Appeals Tribunal and its Registry

53. Article 4.1 of the Statute of the Appeals Tribunal provides that it may hold several sessions per year, as determined by its caseload. In 2010 and 2011, the Tribunal held three sessions annually.

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[2] It should be noted that the total number of appeals filed by both staff members and the Secretary-General does not correspond to the number of appellate judgements addressing Dispute Tribunal judgements because these numbers include both cross-appeals and consolidated appeals.

54. As at 30 June 2012, there were 75 appeals pending on the docket of the Appeals Tribunal. In view of this caseload, the Tribunal is compelled to hold a third session in 2012 so as to avoid the emergence of a backlog of cases. Such a backlog would cause delay in the disposition of cases, which was one of the major drawbacks of the former system of administration of justice.

D. Office of Staff Legal Assistance

1. Introduction

55. The mandate of the Office of Staff Legal Assistance is to assist staff members and their volunteer representatives in processing claims through the formal system of administration of justice (General Assembly resolution 63/253, para. 12). The Office serves staff members, former staff members and their legal beneficiaries (for the purposes of the present report referred to collectively as "staff") serving in the United Nations Secretariat, Offices away from Headquarters, peacekeeping and political missions, certain United Nations tribunals and 22 funds, programmes and other entities, in every duty station of the Organization. In total, the Office serves approximately 75,000 staff.

2. Resources

56. The staffing of the Office of Staff Legal Assistance in New York consists of a Chief of Office at the P-5 level, one P-3 Legal Officer, one P-2 Associate Legal Officer and one G-6 and two G-5 Administrative Assistants. In Addis Ababa and Beirut, the Office consists of one P-3 Legal Officer each. In Nairobi, the Office consists of one P-3 Legal Officer and a second P-3 Legal Officer funded through general temporary assistance funds from the support account for peacekeeping operations. In Geneva, the Office has one Legal Officer. In addition, the Office currently has one P-3 Legal Officer on loan from UNHCR. None of the offices of the Office of Staff Legal Assistance away from New York Headquarters have administrative staff.

57. The staffing table of the Office of Staff Legal Assistance has not changed since its inception. As a result, the disparity in resources between counsel for the respondent and counsel for staff has increased since the new system of administration of justice became operational.

58. Based on a current caseload of over 700 cases per year, each Legal Officer of the Office of Staff Legal Assistance is in principle responsible for handling, on average, approximately 100 cases per year. In addition, they are responsible for ongoing outreach activities, maintaining statistics and drafting inputs for reporting purposes and other mandated and administrative activities.

59. The amount of time spent on each case varies depending on the complexity of the case, the type of assistance rendered, the amount of legal research required and the complexity of settlement negotiations. It is estimated that the Legal Officers of the Office of Staff Legal Assistance spend, on average, 10 hours to complete summary advice cases; 10 to 15 hours to complete cases involving management evaluation applications; and 20 to 25 hours to complete disciplinary cases not involving representation before trial. The average number of working days required to process an appeal to the Dispute Tribunal can take up to 15 days. Preparation time

for hearings can be substantial, requiring consultation with the offices concerned and, for hearings on the merits of a case, locating and briefing witnesses and obtaining witness statements. Appeals to the Appeals Tribunal can take seven or more working days to complete.

60. Considerable efforts have been made to "make do" and operate within existing resources. To date, the Office of Staff Legal Assistance has managed its caseload within existing staffing based on the hard work, dedication and goodwill of its lawyers, who have routinely devoted significant time beyond normal working hours to complete the work. In addition, the Office has relied on volunteer legal counsel, including the part-time services of a few current and retired United Nations staff members who collectively handle several cases. The Office also engages unpaid legal interns in New York and in its field offices who assist with managing the workload. These volunteer resources, however valuable, cannot replace the accountability of full-time legal officers.

61. In his reports on the administration of justice in 2010 and 2011, the Secretary-General identified the greatest challenge facing the Office of Staff Legal Assistance as having to respond to the high volume of requests for assistance with a limited number of staff and limited non-post resources, and recommended approval of additional post and non-post resources.[3] The General Assembly did not act on that recommendation.

62. In a report to the Fifth Committee, the Advisory Committee on Administrative and Budgetary Questions stated that pending decisions on a staff-funded mechanism to support the provision of legal assistance and support to staff and on the mandate and scope of functions of the Office of Staff Legal Assistance, it did not recommend approval of new posts for that Office (A/66/7/Add.6, para. 39). In its resolution 66/237, the General Assembly requested the Secretary-General to present a comprehensive report proposing different options for the representation of staff members before the internal tribunals, including a detailed proposal for a mandatory staff-funded mechanism. The report for a mandatory staff-funded scheme for the Office of Staff Legal Assistance is set out in annex II to the present report. The proposals assume additional resources for the Office, which are also set out in the annex.

63. At the sixty-sixth session of the General Assembly, the Secretary-General requested continuation for a further year, through the end of December 2012, of the P-3 position in Nairobi currently funded under general temporary assistance from the peacekeeping support account. The Assembly approved, on a temporary basis, an additional P-3 position located in Nairobi to support staff in field missions. **In the light of the continuing trend of a large number of cases involving staff from field missions, which demonstrates an ongoing need, and further considering that the Department of Field Support and the Department of Peacekeeping Operations participate in the ongoing funding of the formal system on a cost-**

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[3] A/66/275 and Corr.1, paras. 83-92, and A/65/373 and Corr.1, paras. 58-69. In his report to the General Assembly at its sixty-sixth session, the Secretary-General recommended strengthening the Office of Staff Legal Assistance with the addition of two P-4 posts and two General Service posts, together with continuation of the P-3 post funded through the peacekeeping support account and additional funds for communications, travel and supplies and materials. The Internal Justice Council has made similar recommendations (see A/65/304, paras. 70-73, A/66/158, para. 41 and 42, and A/67/98, para. 46).

shared basis, the Secretary-General recommends that the P-3 position in Nairobi dedicated to supporting staff in field missions be continued for a period of six months from 1 January to 30 June 2013 and be funded through the peacekeeping support account. The continuation of the P-3 position beyond 30 June 2013 will be proposed in the context of the budget of the support account for peacekeeping operations for the 2013/14 financial period.

3. Accomplishments

64. The Office of Staff Legal Assistance provides legal assistance to staff in disciplinary matters, employment matters (from non-appointment to termination), discrimination and harassment, pension benefits and an assortment of other matters. Its legal officers have represented all categories of staff from the General Service category to the level of Assistant Secretary-General in duty stations throughout the world, including in the Secretariat and in the agencies, funds and programmes. The Office provides a range of legal assistance to staff, including summary legal advice, advice and representation during informal dispute resolution, assistance with the management evaluation process and representation of staff before the internal tribunals and other recourse bodies. Each of these activities is tracked as a "case".

65. In 2011, the Office received 702 new cases and closed or resolved a total of 526 cases (including 39 cases carried over from 2009, 79 cases from 2010 and 408 new cases received in 2011). As at 31 December 2011, the Office had 764 pending cases. From its inception to 31 December 2011, the Office has received a total of 1,896 cases, including 346 cases transferred from the former Panel of Counsel, and has closed or resolved 1,138 cases.

(a) *Legal advice and representation for staff by type of assistance rendered*

66. Table 1 below provides a breakdown of cases received in 2009, 2010 and 2011 by type of assistance rendered. "Disciplinary matters" involve cases in which the Office assisted staff members facing a disciplinary process to understand the allegations of misconduct made against them, to respond appropriately and to ensure that their due process rights were protected. "Management evaluation matters" and "other" matters involve cases for which the Office held consultations and provided legal advice, drafted submissions on behalf of staff, held discussions with lawyers for the Administration and negotiated settlements. In cases before the Tribunals, legal officers provided legal advice, undertook all trial preparatory work including legal research, attempted to negotiate settlements prior to a hearing and represented staff at hearings. "Summary legal advice" is legal advice on matters not requiring a particular course of action. For example, staff members frequently approach the Office for legal advice after they have received a management evaluation letter that upholds a contested administrative decision. Where the Office considers that the Management Evaluation Unit has disposed of a case appropriately, it will so advise the staff member and decline to represent the staff member before the Tribunals.

67. The Office of the United Nations Ombudsman and Mediation Services frequently refers staff to the Office of Staff Legal Assistance for assistance during the informal resolution process. The Office is committed to assisting staff to resolve matters informally and encourages staff to resolve their cases informally in every case.

68. In terms of the overall number of cases, there has been considerable growth since 2009, which is mostly attributable to services outside the Tribunals. The number of staff clients approaching the Office for summary advice has increased significantly, and its legal officers have been increasingly engaged in working at the stage of the management evaluation process to resolve cases. The specialized knowledge required to provide expert summary advice and to access Administration and management evaluation personnel to the benefit of staff clients is not readily available outside the Organization. The Office explains to staff when claims have no merit and thereby filters out such claims from the system.[4] Moreover, there is no incentive among the lawyers of the Office, as United Nations staff members, to litigate cases which lack legal merit.[5]

Table 1
Breakdown of cases received by type of assistance

Type of assistance rendered	*2009*	*2010*	*2011*
Disciplinary matters	173	67	51
Management evaluation matters	60	87	109
Representation before the Dispute Tribunal	189	81	112
Representation before the Appeals Tribunal[a]	21	33	26
Other matters	65	39	9
Summary advice	114	265	395
Total	**622**	**572**	**702**

[a] Includes cases received from the United Nations Administrative Tribunal in 2009 and transferred to the Appeals Tribunal.

69. Of the 112 new cases in which the Office of Staff Legal Assistance represented staff before the Dispute Tribunal, 41 per cent were before the Dispute Tribunal in Nairobi, 31 per cent were before the Dispute Tribunal in New York and 28 per cent were before the Dispute Tribunal in Geneva.

70. The largest category of cases disposed of by the Office of Staff Legal Assistance is non-disciplinary forms of separation from service (i.e., non-renewal, termination and abolition of post) (18 per cent). Disciplinary cases are the second highest category of cases (16 per cent). Cases concerning non-selection for a position comprise a further 13 per cent of cases. A substantial portion of cases handled by the Office relate to non-monetary concerns, such as protection from harassment and discrimination, performance and assignment (approximately 10 per

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[4] This was also noted by the Internal Justice Council (see A/67/98, para. 48).

[5] The Guiding principles of conduct for legal officers of the Office of Staff Legal Assistance when acting as counsel for staff, inter alia, provide, in regard to the conduct of his or her duties, that counsel shall not seek or accept any material reward or benefit (other than United Nations salary, in the case of Legal Officers of the Office of Staff Legal Assistance), nor any career advantage, shall not be inhibited from advising or taking any course of action which he or she considers proper by any fear of adverse consequences for himself or herself and shall neither seek nor accept directions from any quarter whatsoever in the discharge of his or her duties to a client, saving those arising from a lawyer/client relationship.

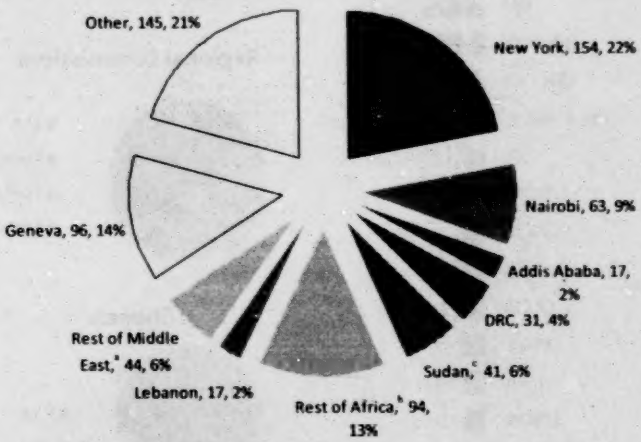
cent) and preserving rights pending litigation (5 per cent). The remaining classifiable cases relate mostly to benefits and entitlements.

(b) Distribution of caseload by duty station

71. Figure I presents the caseload of the Office of Staff Legal Assistance, not restricted to Dispute Tribunal cases, by duty station of the staff member and/or decision maker. Approximately 43 per cent of cases originate from United Nations entities served by the Dispute Tribunal in Nairobi.[6] This case distribution is reflected in the large number of cases from Department of Peacekeeping Operations field missions handled by the Office.

Figure I

Breakdown of the number of cases received by the Office of Staff Legal Assistance in 2011 by duty station



[a] Includes Kuwait, Gaza, Baghdad, Jordan, Kabul and Jerusalem.

[b] Includes Abidjan, Arusha, Kigali, Laayoune, Monrovia, Sierra Leone, Chad and Somalia.

[c] Cases listed under the Sudan include both South Sudan and the Sudan.

(c) Distribution of cases handled by the Office of Staff Legal Assistance by department, agency, fund or programme of staff

72. Figure II provides a breakdown of the number of new cases received by the Office of Staff Legal Assistance by the entity of the staff member, including Secretariat departments, peacekeeping and political missions and United Nations agencies, funds and programmes. As in previous years, staff serving in peacekeeping and political field missions have significantly more cases than staff from other United Nations entities, which reflects the significant staffing component of these missions rather than necessarily a higher incidence of human resources or legal problems.

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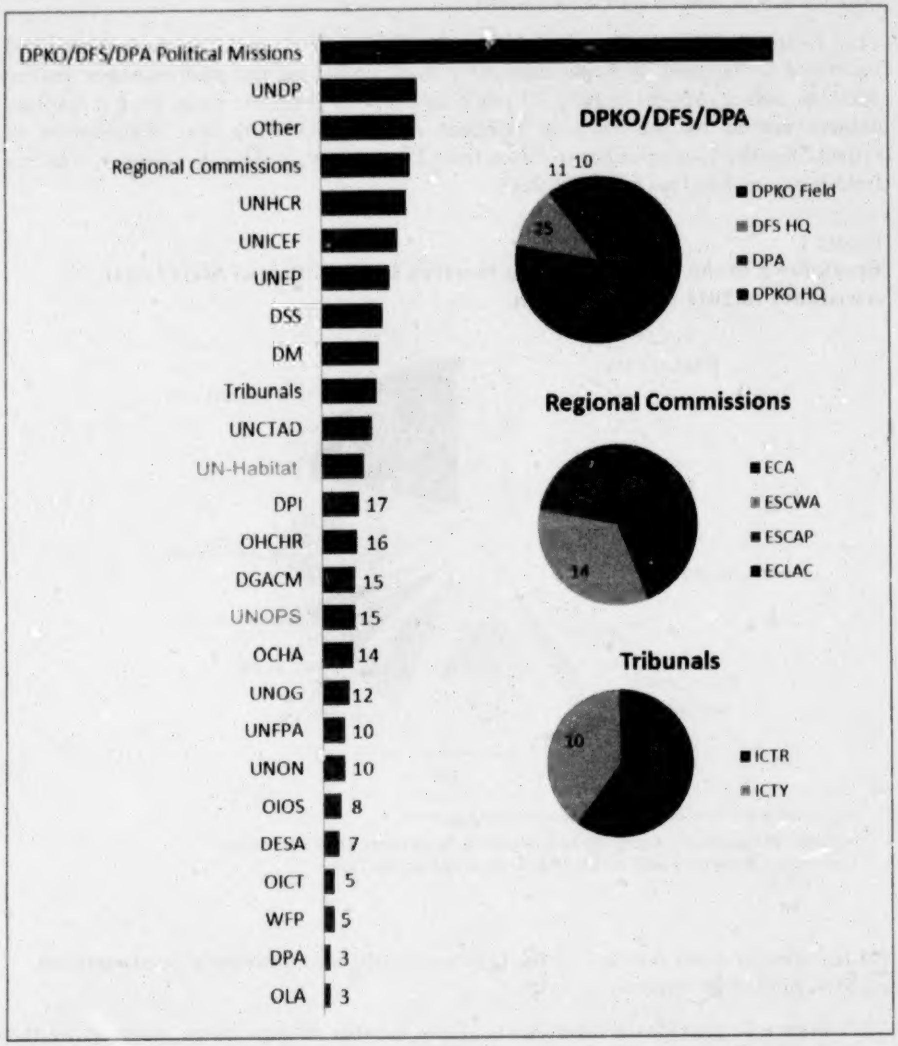
[6] **UNAMI (Baghdad) is not served by Nairobi, although it is included in the category "Rest of the Middle East" in figure I.**

Figure II
Breakdown of number of cases received in 2011 by United Nations entity of the staff member (department, fund or programme or other entity)



(d) *Declined or delayed assistance*

73. It is the policy of the Office of Staff Legal Assistance to decline to represent staff before the internal tribunals or other formal recourse bodies if, in the view of the Office, there is no reasonable likelihood that the case will succeed. Of the 47 Dispute Tribunal judgements issued in 2011 in which the Office was counsel of record for the staff member, 38 (81 per cent) were in favour of the staff member. The Office does not waste valuable time and limited resources in pursuing unmeritorious cases. Of the 101 cases in 2011 where the Office declined to provide assistance, for example, 22 cases were time barred and in 23 cases the Office

declined to provide assistance because the complainants had no standing before the internal justice system. In such cases, the Office endeavoured to explain the legal status to such personnel. In two cases, the Office declined to act or terminated its representation due to an ethical or professional issue that would compromise the professional obligations of the lawyer or frustrate the lawyer-client relationship.[7] In two further cases, the Office declined to provide assistance pending the resolution of other proceedings as was appropriate in the circumstances; however, it should be noted that, normally, the Office does not decline or suspend assistance during informal resolution, but continues to provide legal advice to staff during the process.

74. Usually, staff members will decide not to pursue litigation after receiving advice from the Office that their case lacks merit and that the Office will not represent them. Nonetheless, some staff members still choose to pursue recourse through the formal system. The Office is aware of 17 such cases; in all of them, the staff member was unsuccessful before the Tribunals.

(e) Settling cases outside the formal process

75. As noted, in all cases the Office of Staff Legal Assistance actively assists staff to pursue settlement opportunities either in discussions with legal counsel for the Administration and with senior managers, or in conjunction with efforts by the Office of the United Nations Ombudsman and Mediation Services in the Secretariat or in the funds and programmes. Where a negotiated settlement cannot be reached, the Office assists staff to assess the costs and benefits of formal redress, including litigation. It has been the experience of the Office that settlement efforts have the greatest likelihood of success in cases that proceed to the Dispute Tribunal, moderate likelihood of success during management evaluation and more limited likelihood of success in disciplinary cases.

E. Office of the Executive Director

1. Review of the Office of the Executive Director

76. The Office of the Executive Director plays an important role in maintaining the independence of the formal system and is responsible for the coordination of the independent elements of the formal system, including oversight and coordination of the Tribunal Registries and the Office of Staff Legal Assistance. The Office of the Executive Director is responsible for the management and administration of the Office of Administration of Justice, which provides administrative, operational and technical support to the Tribunals through their Registries and to the Office of Staff Legal Assistance and also provides assistance, as appropriate, to the Internal Justice Council. The Office of the Executive Director also represents the formal system both within the United Nations and before external bodies and in all matters requiring interdepartmental coordination and consultation.

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[7] Clients of the Office of Staff Legal Assistance are required to acknowledge and sign a consent form for legal representation by the Office. The form includes a provision that counsel provided by the Office may withdraw his or her services for good cause, which includes any situation in which a client seeks to insist upon a course of action incompatible with the duties of the counsel under the United Nations staff regulations and rules, the law and legal ethics or the duties of the counsel to the United Nations tribunals as officers of the court.

77. The Executive Director advises the Secretary-General on systemic issues relating to the administration of internal justice, represents the formal system both within the United Nations and before external bodies, liaises with the heads of other United Nations offices, including the Office of the United Nations Ombudsman and Mediation Services, and is responsible for disseminating information regarding the formal system of administration of justice. The Executive Director also prepares reports of the Secretary-General to the General Assembly on issues relating to the administration of justice and is responsible for ensuring administrative and technical support to the Internal Justice Council.

78. Under the authority of the Executive Director, the Principal Registrar is responsible for the coordination of the substantive, technical and administrative support to the judges of the Tribunals. The Principal Registrar advises on the optimal use of the human and financial resources allocated to the Tribunals, analyses the implications of emerging issues in the Tribunals, makes recommendations on possible strategies and measures and advises on all matters related to the operational activities of the Registries.

79. The Office of the Executive Director launched a website on 28 June 2010 explaining all aspects of the formal system in all six official languages of the United Nations. The website provides a rudimentary search tool for researching Dispute Tribunal and Appeals Tribunal jurisprudence. In 2011 there were 103,156 visits to the website, of which 26 per cent were new visitors. Overall, use of the website is increasing. In 2011, the average number of visits per month was 8,596, which constitutes an increase of 1,600 visits per month from 2010 levels. The Office continues to improve the structure and content of the website. An electronic filing section was added in July 2011 that provides staff members with information on how to file claims online through the new court case management system and enables them to request an account for access to the electronic filing portal and existing cases.

80. On 6 July 2011 a fully web-based court case management system was launched that permits staff members at any duty station to file their submissions electronically to the Tribunals and allows parties to monitor their cases electronically from any geographic location. Some 895 cases are currently managed through this new system. The court case management system also includes an internal case management tool for the Registries of the Dispute and Appeals Tribunals to centralize the management of cases before them. A separate case management tool for the Office of Staff Legal Assistance, which is currently under development, is also included.

81. The Office of the Executive Director provided administrative and technical support to the Internal Justice Council in connection with the selection process to fill the judicial vacancies that arose at the expiration of the three-year terms of judges in the Dispute and Appeals Tribunals on 30 June 2012 and the organization of the election of the judges. The elections for the Appeals Tribunal judges took place on 23 February 2012 and the elections for the Dispute Tribunal judges took place on 16 April 2012. A description of the judicial selection process was provided by the Council in its report to the General Assembly (see A/66/664 and Add.1).

82. The Office of the Executive Director also provided administrative and technical support to the Internal Justice Council in preparing its annual report to the

General Assembly on the implementation of the new system of administration of justice (A/67/98).

83. The Office of the Executive Director liaised with management and staff to facilitate the nomination of new members of the Internal Justice Council. The appointment of new members remains pending and, as a result, the consultations with the Council that were requested by the General Assembly in resolution 66/237 have not taken place.

2. Issues relating to the functioning of the Office of the Executive Director

84. As described above, the workload of the Office of the Executive Director is extensive. The need for additional assistance was highlighted in the report of the Secretary-General on the administration of justice submitted to the General Assembly at its sixty-sixth session (see A/66/275 and Corr.1, paras. 103 and 104) and has been noted by the Internal Justice Council (A/67/98, para. 57). The workload has not abated, particularly in the light of the work requested of it by the Assembly in resolution 66/237 and of the considerable support provided to the Council. The mandate has been met only because of the consistent and considerable overtime work undertaken by the members of the Office and by using temporary assistance. While no request for an additional post is made at this time, should the workload continue to increase, the matter will have to be revisited.

85. The travel budget of the Office of Administration of Justice must accommodate travel by the Executive Director and her staff; travel of the staff in connection with two plenary sessions of the Dispute Tribunal and three sitting sessions of the Appeals Tribunal; travel of the Office of Staff Legal Assistance or other participants in hearings when required by the Tribunals; any other travel of the staff of the Office of Administration of Justice; and all travel of the members of the Internal Justice Council. Efforts are being made to the extent possible to meet the travel requirements through redeployment of resources, with the result that other activities such as staff training have been affected.

86. The Internal Justice Council is an independent body with a substantial mandate, including a critical monitoring and oversight function. In paragraph 45 of resolution 66/237, the General Assembly stressed that the Council can help ensure independence, professionalism and accountability in the system of administration of justice and requested the Secretary-General to entrust the Council with including the views of both the Dispute and Appeals Tribunals in its annual report. The Council also acts as a consultative body on a number of matters upon request of the Assembly.

87. No provision was made in the current or prior budgets of the Office of Administration of Justice for remuneration of the external members of the Council when they carry out their considerable functions. This cost, including final payment to the former external members of the Council, will have to be prioritized within existing resources as was done in the past.

88. The decentralization of the new system of administration of justice and the mandate of the Office of Administration of Justice to be a decentralized office require substantial reliance on technological solutions that must be maintained and improved to keep pace with user requirements and technology. Three important information technology projects have been identified. Firstly, it is necessary to

migrate the court case management system to a new version of the platform in order to ensure continuing technical support, which will have to be prioritized within existing resources.

89. Secondly, a number of critical upgrades are required to facilitate and enhance user access to the court case management system. For example, currently there is no French version of the electronic filing portal, even though French is a working language of the Tribunals. In order to serve French-speaking users, the electronic filing portal must be offered in French. At present, staff members wishing to use the file electronically must have access to computers with the Internet Explorer web browser installed. The system must be further developed to provide for cross-browser compatibility and additional fields are required to enhance the capacity of the court case management system to capture and collate data for statistical reporting purposes, without which data generated from the system will have to be supplemented by data gathered manually, which is inefficient and time-consuming and could compromise the ability of the Office of the Executive Director to provide accurate statistics. Efforts will be made to undertake as many of the upgrades as possible within existing resources through prioritization and redeployment of funds.

90. Thirdly, the search tool on the website does not have advanced filters that permit refined searching techniques. Enhancements to the search tool are required to enable users to conduct more sophisticated searches of the judgements and orders of the Tribunals. As the body of jurisprudence of both the Dispute Tribunal and the Appeals Tribunal increases, it has become increasingly more difficult for users to undertake legal research, and the need for an enhanced search tool has become pressing. Efforts will be made to undertake this project within existing resources through prioritization and redeployment.

91. Finally, no provision was made in previous budgets for the fees of the Department of Public Information of the Secretariat to host and maintain the website. For the 2012-2013 biennium, these fees will have to be prioritized within existing resources.

F. Legal offices representing the Secretary-General as respondent

1. United Nations Dispute Tribunal

92. Legal staff located at Headquarters and in the offices away from Headquarters at Geneva, Nairobi and Vienna represent the Secretary-General before the Dispute Tribunal. Due to the increase in the number of cases filed by staff members and the short deadlines to file replies, the offices and units representing the Secretary-General as respondent continue to function at or above capacity.

(a) Administrative Law Section, Office of Human Resources Management

93. The Administrative Law Section is located in the Human Resources Policy Service in the Office of Human Resources Management. The Section is composed of an Appeals Unit and a Disciplinary Unit. It is responsible for representing the Secretary-General in his role as respondent before the Dispute Tribunal with respect to cases filed by staff serving across the global Secretariat and cases from staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. Cases brought by staff of the United Nations offices

administered by Geneva, Nairobi and Vienna, UNEP and UN-Habitat are handled by officials at those duty stations.

94. The Administrative Law Section also handles disciplinary matters referred to the Office of Human Resources Management relating to all Secretariat staff and staff of the international tribunals. It also provides advice to managers on the internal justice system in general, as well as aspects of individual appeals and disciplinary cases.

(i) Appeals Unit

95. Upon receipt of an application from the Dispute Tribunal, the Administrative Law Section is responsible for obtaining comments on the application from the managers involved and for drafting a reply. The time limit for submitting a reply is 30 days, requiring prompt action from both the Section and the managers involved. The Section works closely with other offices within the Office of Human Resources Management in handling the cases before the Dispute Tribunal. Challenges before the Dispute Tribunal focus on the interpretation and application of the United Nations Staff Rules. The expertise of human resources professionals is critical in preparing the response to claims and determining viable strategies for the informal resolution of claims.

96. During the course of the proceedings, the legal officers of the Administrative Law Section participate in direction hearings and hearings on merits and make further written submissions as ordered by the Dispute Tribunal. Representation at hearings requires substantial preparation time, including further consultation with the offices concerned and with the Office of Legal Affairs, where appropriate; meeting with respondent witnesses; and preparing for the cross-examination of witnesses called by the applicant or by the Dispute Tribunal.

97. The Administrative Law Section is also responsible for advising on whether efforts towards informal resolution should be pursued or the litigation should be continued. The recommendations provide a factual and legal analysis of the issues arising in the case and advice as to the most cost-effective way of resolving the dispute. If a recommendation to seek informal resolution is accepted, the Section is responsible for obtaining the necessary approvals, advising in the course of the negotiations with the applicant and his or her counsel, working with the Office of the Ombudsman to finalize the settlement agreement and following up on its implementation. The negotiations are frequently protracted and demanding; however, the potential benefit of resolving the dispute informally is substantial.

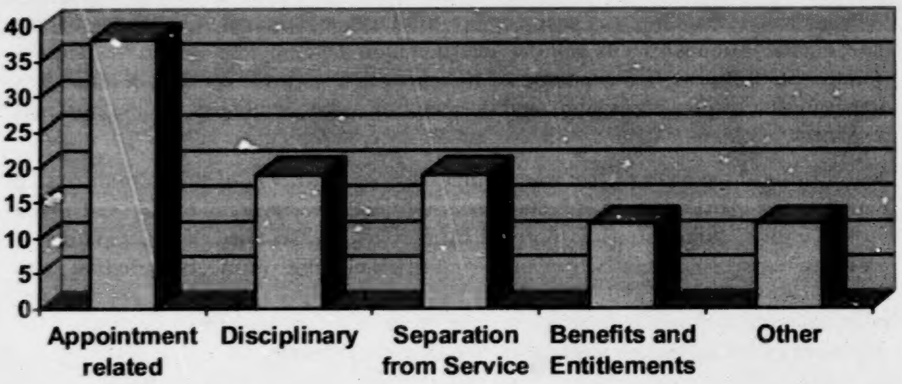
98. When a final judgement is issued, the Administrative Law Section liaises with the Office of Legal Affairs, which determines whether to appeal the judgement to the Appeals Tribunal. The Section is also responsible for implementing the final judgements, obtaining necessary information and conveying the judgements to the relevant officials for execution.

99. The Section also represents the Secretary-General in suspension of action proceedings, where a party seeks the urgent suspension of the implementation of an administrative decision pending management evaluation. These applications must be resolved without delay and require urgent attention and intense preparation, in particular when the office concerned and potential witnesses are located away from Headquarters and time differences are at issue.

100. The number of applications filed by staff during the current reporting period has increased significantly.[8] During this period, the Section handled 337 cases pending judgement or implementation, including 162 new cases received in 2011. This is an increase compared with the number of cases handled during the previous reporting period.[9] At any given time during the reporting period, the Section had approximately 200 open cases pending final judgement or implementation.[10] Of these, approximately 38 per cent concerned issues related to appointment; 18 per cent were disciplinary appeals; 13 per cent related to benefits and entitlements; 18 per cent related to separation from service; and 13 per cent related to other matters.

Figure III

Cases handled by the Administrative Law Section before the United Nations Dispute Tribunal during the period 1 January to 31 December 2011



101. During the reporting period, the Dispute Tribunal issued 77 judgements in cases handled by the Administrative Law Section, of which 41 judgements were decided in favour of the Administration and 19 in favour of the applicant, while 14 cases were disposed of after having been settled or withdrawn and 3 judgements concerned remedies only. Of the judgements adverse to the Administration, 9 were appealed resulting in 2 judgements being overturned and the compensation award being reduced in 2 cases; 5 cases remain pending before the Appeals Tribunal.

102. During the reporting period, 48 applications for suspension of action were filed, of which 29 were dismissed, 11 were granted and 8 were settled or withdrawn. Three suspension-of-action orders granting relief were appealed. One order was upheld, and two appeals remain pending before the Appeals Tribunal.

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[8] In 2010, the Administrative Law Section received less than 100 new cases in the form of applications filed by staff members before the United Nations Dispute Tribunal. In 2011, the Section received 162 new cases from the Dispute Tribunal. By mid-July 2012, the Section had already received over 110 new cases.

[9] During the previous reporting period (1 July 2010 to 31 June 2011), the Section handled 318 cases.

[10] By mid-2012, the number of cases had increased to over 270 open cases awaiting final judgement or implementation.

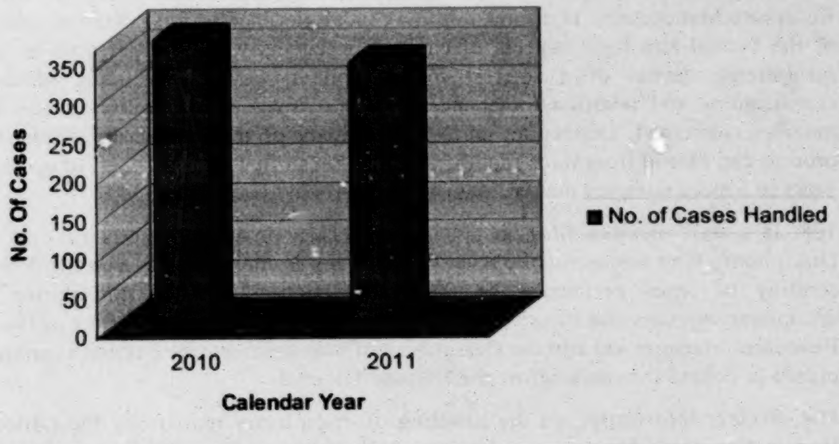
(ii) Disciplinary Unit

103. The Disciplinary Unit of the Administrative Law Section is responsible for handling disciplinary matters referred to the Office of Human Resources Management for action. Following the abolition of the Joint Disciplinary Committees, the Disciplinary Unit substantively reviews the facts of and analyses each case. In its analysis of disciplinary cases and in making recommendations for the processing of cases, the Disciplinary Unit often works closely with the Conduct and Discipline Unit of the Department of Field Support, the conduct and discipline teams in the field and the investigative entity.

104. During the reporting period, the Section received 122 new disciplinary cases. This represented an increase of nearly 5 per cent over 2010.

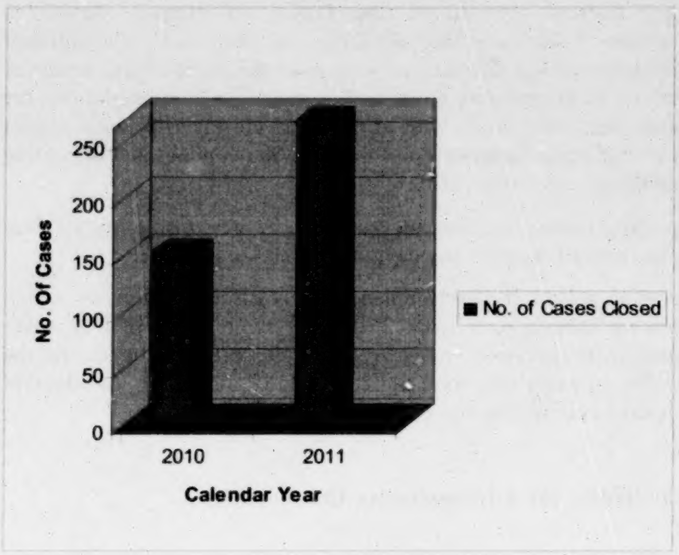
105. During the reporting period, the Section handled 344 disciplinary cases, which included cases that were carried over from 2010. The reduced number of cases handled, as compared with previous years, reflects the progress made in the reduction of the backlog of cases that were not completed prior to the introduction of the new internal justice system (see figure IV).

Figure IV
Number of cases handled by the Administrative Law Section



106. A total of 273 disciplinary cases were closed during the reporting period, representing a significant increase over previous periods and an increase of 80 per cent from the period 1 January to 31 December 2010 (see figure V).

Figure V
Number of cases closed by the Administrative Law Section



107. Under the new system of administration of justice, the Office of Human Resources Management is responsible for conducting increasingly detailed analyses of the factual and legal aspects of cases. Consequently, substantial time is spent scrutinizing details of a referral for disciplinary action, including obtaining clarifications and additional evidence from the investigating entity or the staff member concerned. Depending on the complexity of the matter, the disciplinary process can extend from three months in a relative straightforward case, to up to two years in a more complex matter.

108. If a staff member files an appeal in relation to their disciplinary case, the Disciplinary Unit represents the Secretary-General in the appeal. Given the detailed scrutiny of cases performed by the Administrative Law Section during the disciplinary process and its proximity to the decision makers in the Office of Human Resources Management and the Department of Management, the Section is uniquely placed to defend the cases before the Dispute Tribunal.

109. Further information on the handling of disciplinary matters by the Office of Human Resources Management between July 2011 and June 2012 is contained in the report of the Secretary-General on his practice in disciplinary matters, which is being submitted separately to the General Assembly (A/67/171).

(iii) Advisory function of the Administrative Law Section

110. The Administrative Law Section continues to provide an advisory function to managers on matters arising out of the administration of justice system, including individual complaints, interpretation and application of the Staff Regulations and Rules and administrative issuances, individual disciplinary cases and the investigation process.

111. During the reporting period, there were a number of management initiatives aimed at enhancing the capacity of the Organization to respond to the ongoing demands of the new system of justice, in relation to which the Section played a key role.

112. In December 2011, steps were taken to ensure that managers were informed of developments in this important and evolving area. The Department of Management issued the third volume in its lessons learned guides for managers, prepared by the Administrative Law Section in conjunction with the Management Evaluation Unit, which provided an outline of the investigation and disciplinary processes applicable to staff members, focusing on the roles and responsibilities of managers in relation to those processes.

(iv) *Resources of the Administrative Law Section*

113. The rising number of cases to be addressed, short deadlines for submission of the replies of the respondent, the large numbers of hearings held by the Dispute Tribunal and the time differences between New York and the other duty stations where client departments and offices, witnesses and Dispute Tribunal branches are located, continue to result in a heavy workload and increased pressure for staff of the Section. The Dispute Tribunal regularly requires the respondent to file numerous written submissions, as well as preparing for and attending several case management and merit hearings. Preparation time for hearings is often substantial, and a considerable amount of the resources of the Section have to be dedicated to responding effectively to the demand of the Dispute Tribunal for multiple submissions and hearings in individual cases.

114. In its resolution 66/237, the General Assembly granted three out of the five legal officer posts requested for the Administrative Law Section by the Secretary-General in his previous report (A/66/275 and Corr.1). Two of these P-3 legal officer posts have been filled. The recruitment for the third post is at its final stage. The addition of these posts has addressed part of the heavy workload the Section and its need for a sustainable resource base. However, the situation may become more acute should the trend of an increasing number of cases being brought by staff members before the Dispute Tribunal continue.

(b) *United Nations Office at Vienna*

115. In the United Nations Office at Vienna and the United Nations Office on Drugs and Crime, overall responsibility for acting as representative of the Secretary-General in administration of justice matters has been delegated to the Director of the Division for Management. Day-to-day responsibility for handling allegations of misconduct prior to referral to the Office of Human Resources Management, legal advice in respect of requests for management evaluation, representation of the Organization before the Dispute Tribunal and the providing of input to the Office of Legal Affairs in respect of appeals before the Appeals Tribunal, is assigned to the Human Resources Management Service and coordinated by the Human Resources Policy Officer within the Service.

116. The United Nations Office at Vienna and the United Nations Office on Drugs and Crime strongly support the possibilities of informal dispute resolution and a number of cases have been successfully resolved through the Office of the Ombudsman. As regards the formal system, these two entities work in an efficient,

collaborative and positive manner with the Management Evaluation Unit and the Dispute Tribunal in Geneva and its Registry, where the majority of the applications filed by staff of the two entities are considered.

117. The United Nations Office at Vienna and the United Nations Office on Drugs and Crime continue to observe an increase in requests for legal advice and for confirmation of compliance with the relevant applicable law from managers. While this significantly affects the resources of the Human Resources Management Service, the return on such investment has proven to be beneficial where potentially contentious issues could be addressed at an early stage. As regards the formal system, the two Vienna entities continue to observe an increase in the number of cases, coupled with an increase in the number of hearings before the Dispute Tribunal and in the orders rendered by the Dispute Tribunal requiring action within short deadlines.

118. To continue to keep staff and management informed of developments in the administration of justice system, the United Nations Office at Vienna and the United Nations Office on Drugs and Crime hold briefings, provide training opportunities, organize lunch-time forums and town hall meetings and disseminate relevant information through electronic messages to staff in Vienna and in the field.

119. The internal justice system has continued to overstretch the legal support capacity with one Human Resources Policy Officer in the Human Resources Management Service being assigned to respond to the demands of the system. It has affected the discharge of the regular functions of the Officer and thus of the Service as a whole. In this regard, the United Nations Office at Vienna and the United Nations Office on Drugs and Crime appreciate the P-4 legal officer post recently established pursuant to General Assembly resolution 66/237. These two entities continue to work closely with the United Nations Office at Geneva to develop modalities for practical collaboration in augmenting the existing legal capacity.

(c) United Nations Office at Geneva

120. In the United Nations Office at Geneva, a Human Resources Officer (P-4) with a legal background acts as the representative of the Secretary-General before the Dispute Tribunal in cases filed by staff members at the Office and client organizations.[11] In addition, in resolution 66/237 the General Assembly approved one legal officer (P-4) and one legal assistant position (General Service) to be funded under general temporary assistance for the biennium 2012-2013. The recruitment process for the General Service position has been completed and is ongoing for the P-4 post. In the meantime, in order to cope with the increased workload, it had become necessary to add a legal officer (P-3), funded on a cost-sharing basis by client organizations (OHCHR, UNCTAD, ECE and Office for the Coordination of Humanitarian Affairs). However, this arrangement is in place only until the end of 2012. The legal team operates under the authority of the Chief, Human Resources Management Service.

121. In the United Nations Office at Geneva the combination of legal knowledge and human resources policy has proven to be very useful as the Dispute Tribunal often requests the respondent to provide a detailed legal analysis of the applicable

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[11] OHCHR,UNCTAD, Office for the Coordination of Humanitarian Affairs, ECE and other smaller entities.

rules and regulations. Such expertise also proved to be successful in the context of informal dispute resolution through the Office of the Ombudsman and a number of settlement agreements were negotiated. When a final judgement is issued, the Human Resources Management Service at Geneva liaises with the Office of Legal Affairs to prepare an appeal before the Appeals Tribunal if applicable. It is also responsible for implementing the final judgements.

122. The Human Resources Management Service legal team provides upstream legal advice on a wide range of human resources and legal issues to managers from the United Nations Office at Geneva and its client organizations. It organizes trainings and briefings on the administration of justice and the relevant jurisprudence. It also assists managers in drafting replies to the Management Evaluation Unit. The legal team is responsible for handling disciplinary matters within its delegated authority and provides procedural advice to aggrieved staff members.

123. Should the current volume of work continue, it will be necessary to revisit the financing of the P-4 and General Service positions beyond 2013.

(d) *Regional Commissions and the international tribunals*

124. The human resources offices at the regional commissions (ECE, ESCAP, ECLAC, ECA and ESCWA) and the international tribunals (Former Yugoslavia and Rwanda) are called upon to perform additional functions and provide additional services under the new system.

125. The human resources offices are responsible for the day-to-day handling of disciplinary cases prior to referral to the Office of Human Resources Management and requests for management evaluations. Further, they are called on to give advice and guidance to managers on the emerging jurisprudence from the Dispute Tribunal. In addition, they liaise with the Administrative Law Section regarding ongoing cases, respond to requests for additional information sought by the Dispute Tribunal, establish contact with witnesses and provide information required for the implementation of judgements.

126. In resolution 66/237, the General Assembly endorsed the recommendation of the Advisory Committee on Administrative and Budgetary Questions to approve one P-4 human resources policy officer with a legal background to give internal advice to management and human resources services at ESCAP and ESCWA and one General Service post (Other level), both to be funded under general temporary assistance for the biennium 2012-2013. The recruitment for these posts is under way.

127. The legal officers at the United Nations Office at Geneva support the work of ECE. The legal officers based in New York are responsible for advising ECLAC. The legal officer post at the United Nations Office at Nairobi will support the work of ECA.

(e) *United Nations Development Programme*

128. The Legal Support Office in the United Nations Development Programme (UNDP) is an integrated legal office for UNDP and its affiliated agencies whose legal work spans all aspects of corporate, institutional and administrative law, with an added focus on policy and training. The Administrative Law Practice Group of

the Office is composed of six lawyers, including the Head of Practice (P-5) and one P-5, three P-4 and one P-3 legal officers, who are assisted by two General Service support staff (G-6 and G-5). The Group is responsible for handling all administrative law issues concerning staff members on a UNDP letter of appointment and United Nations volunteers and for the provision of legal advice and support to UNDP and its affiliated entities. It handles all requests for management evaluation, all disciplinary cases and all cases before the Dispute Tribunal. In addition, the Group provides legal advice relating to policy work, conducts legal training and responds to all legal queries on a wide array of issues ranging from private legal obligations to advice on tax and pension matters.

129. The Legal Support Office is involved in all stages of both informal and formal resolution of staff grievances. At the informal stage, the Office provides advice and guidance to managers, including the Office of Human Resources, country offices and regional bureaux, with a view to resolving disputes prior to their developing into a formal complaint or appeal. When necessary, the Office may also seek the intervention of the Ombudsman for Funds and Programmes. This preventive work by the Office has increased significantly in the past years as more managers seek legal guidance to ensure that their decisions are taken in compliance with the UNDP legal framework, resulting in greater expenditure of time and resources.

130. Where issues are not resolved at the informal stage, the Legal Support Office makes recommendations to the Assistant Administrator and Director of the Bureau of Management on the disposition of requests for management evaluation. The Legal Support Office also represents UNDP before the Dispute Tribunal, participates in mediation proceedings and coordinates with the Office of Legal Affairs of the Secretariat in respect of its representation of the Secretary-General concerning UNDP cases before the Appeals Tribunal. The Office also recommends action from an accountability perspective where warranted.

131. In addition to providing extensive legal advice and handling appeal and disciplinary cases, the Legal Support Office continues to be active in outreach activities. In 2011, it provided training courses to managers in various regions to raise awareness of relevant legal issues, including the internal justice system. Moreover, the online legal course developed by the Office, which is compulsory for all UNDP staff members, has been a very successful tool for raising awareness on legal issues related to the internal justice system. In addition, in view of the increased focus on oral hearings and full trials at the Dispute Tribunal, all the lawyers at the Administrative Law Practice Group have taken specialized training courses in the areas of advocacy and litigation.

Table 2
United Nations Development Programme management evaluation cases, as at 31 December 2011

Total management evaluation cases received[a]	Cases upheld	Cases settled[b]	Cases appealed to Dispute Tribunal[c]	Cases carried forward[d]	Outcome of cases at Dispute Tribunal[e]			
					Upheld	Partially upheld	Overturned	Pending
18	11	3	1	4	–	–	–	1

[a] Includes two cases carried over from 2010 and earlier and 16 cases received in 2011.

[b] Includes all cases where the matter was settled in whole or in part as a result of management evaluation.

[c] Includes all cases that were appealed to the Dispute Tribunal in 2011.

[d] Includes all open cases that were not resolved in 2011 and were carried over to 2012.

[e] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Dispute Tribunal as at 31 December 2011.

Table 3
United Nations Development Programme disciplinary cases, as at 31 December 2011

Total disciplinary cases received[a]	Total disciplinary measures imposed	Cases appealed to Dispute Tribunal[b]	Cases carried forward[c]	Outcome of cases at Dispute Tribunal[d]			
				Upheld	Partially upheld	Overturned	Pending
43	11	4	9	1	–	–	3

[a] Includes 21 cases carried over from 2010 and earlier and 22 cases received in 2011.

[b] Includes all cases that were appealed to the Dispute Tribunal in 2011.

[c] Includes all open cases that were not resolved in 2011 and were carried over to 2012.

[d] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Dispute Tribunal as at 31 December 2011.

Table 4
United Nations Development Programme outcome of cases at the United Nations Dispute Tribunal, as at 31 December 2011

Type of case	Cases appealed to Dispute Tribunal[a]	Outcome of cases at Dispute Tribunal[b]			
		Upheld	Partially upheld	Overturned	Pending
Employment[c]	13	5	–	1	7
Disciplinary	7	1	–	–	6
Total	**20**	**6**	**–**	**1**	**13**

[a] Includes all cases that were appealed to the Dispute Tribunal in 2011 or were appealed to the Dispute Tribunal in 2010 or earlier and carried over into 2011.

[b] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Dispute Tribunal as at 31 December 2011.

[c] Includes all non-disciplinary cases, including cases for which a management evaluation was conducted and other non-disciplinary cases that proceeded directly to the Dispute Tribunal.

(f) *United Nations Children's Fund*

132. The Office of the Principal Adviser to the Executive Director, within the Office of the Executive Director, has overall responsibility for legal support and advice within UNICEF. The Policy and Administrative Law Section within the Division of Human Resources continues to handle requests for management evaluation and represents UNICEF before the Dispute Tribunal.

133. As confirmed by the statistics below, UNICEF attaches particular importance to management evaluations, not only to avoid unnecessary litigation, but primarily to ensure that the rights of its staff members are fully respected.

Table 5
United Nations Children's Fund management evaluation cases, as at 31 December 2011

Total management evaluation cases received	*Cases upheld*	*Cases settled*[a]	*Cases appealed to Dispute Tribunal*[b]	*Cases carried forward*[c]	*Outcome of cases at Dispute Tribunal*[d]			
					Upheld	*Partially upheld*	*Overturned*	*Pending*
47	39	8	7	7	–	–	–	7

[a] Includes all cases where the matter was settled in whole or in part as a result of management evaluation.
[b] Includes all cases that were appealed to the Dispute Tribunal in 2011.
[c] Includes all open cases that were not resolved in 2011 and were carried over to 2012.
[d] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011.

Table 6
United Nations Children's Fund disciplinary cases, as at 31 December 2011

Total disciplinary cases received	*Total disciplinary measures imposed*	*Cases appealed to Dispute Tribunal*[a]	*Cases carried forward*[b]	*Outcome of cases at Dispute Tribunal*[c]			
				Upheld	*Partially upheld*	*Overturned*	*Pending*
55	22	2	2	–	–	–	2

[a] Includes all cases that were appealed to the Dispute Tribunal in 2011.
[b] Includes all open cases that were not resolved in 2011 and were carried over to 2012.
[c] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011.

Table 7

United Nations Children's Fund outcome of cases at the United Nations Dispute Tribunal, as at 31 December 2011

Type of case	*Cases appealed to Dispute Tribunal*[a]	*Outcome of cases at Dispute Tribunal*[b] *Upheld*	*Partially upheld*	*Overturned*	*Pending*
Employment[c]	14	–	2 (settled)	1	11
Disciplinary	4	1	–	1	2
Total	**18**	**1**	**2**	**2**	**13**

[a] Includes all cases that were appealed to the Dispute Tribunal in 2011 or were appealed to the Tribunal in 2010 or earlier and carried over into 2011.

[b] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011.

[c] Includes all non-disciplinary cases, including cases for which a management evaluation was conducted and other non-disciplinary cases that proceeded directly to the Dispute Tribunal.

(g) *Office of the United Nations High Commissioner for Refugees*

134. Prior to the reform of the system of administration of justice, the administrative review of decisions concerning the staff of UNHCR was carried out by the Administrative Law Unit of the Secretariat. At present, UNHCR conducts its own management evaluation, which is delegated to the Deputy High Commissioner. The Legal Affairs Service, reporting directly to the Deputy High Commissioner, provides advice on all management evaluations.

135. UNHCR has had a very positive experience with the management evaluation process, which has enabled management to critically review its decisions, take remedial action before cases escalate to the Dispute Tribunal and review and improve its procedures. In many cases, the process has also re-established dialogue between UNHCR and the staff member.

136. At the Dispute Tribunal, UNHCR is represented by the Director of the Division of Human Resources Management. The Legal Affairs Service advises the Director on all pending cases.

137. At UNHCR, significant emphasis has been placed on the informal resolution of grievances at an early stage, and a number of cases have been resolved informally through the involvement of the UNHCR Ombudsman. Nevertheless, since the introduction of the new system, there has been a noticeable increase in the number of grievances that staff members seek to address through the formal system.

138. UNHCR continues to support the work of the Office of Staff Legal Assistance with the non-reimbursable loan of a Legal Officer to its Geneva office.

139. The tables below provide statistical information on the number of matters addressed by UNHCR and their disposition.

Table 8
Office of the United Nations High Commissioner for Refugees, management evaluation cases, as at 31 December 2011

Total management evaluation cases received[a]	*Cases upheld*	*Cases settled*[b]	*Cases appealed to Dispute Tribunal*[c]	*Cases carried forward*[d]	*Outcome of cases at Dispute Tribunal*[e] *Upheld*	*Partially upheld*	*Overturned*	*Pending*
77	23	4	27	29	9	2	2	17

[a] Includes 8 cases carried over from 2010 and earlier and 69 cases received in 2011.

[b] Includes all cases where the matter was settled in whole or in part as a result of management evaluation. Does not include 21 cases withdrawn or considered moot or not receivable.

[c] Includes all cases that were appealed to the Dispute Tribunal in 2011.

[d] Includes all open cases that were not resolved in 2011 and were carried over to 2012.

[e] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011. Does not include 10 cases that were withdrawn.

Table 9
Office of the United Nations High Commissioner for Refugees, disciplinary cases, as at 31 December 2011

Total disciplinary cases received[a]	*Total disciplinary measures imposed*	*Cases appealed to Dispute Tribunal*[b]	*Cases carried forward*[c]	*Outcome of cases at Dispute Tribunal*[d] *Upheld*	*Partially upheld*	*Overturned*	*Pending*
18	4	–	5	–	–	4	–

[a] Includes 6 cases carried over from 2010 and earlier, and 12 cases received in 2011.

[b] Includes all cases that were appealed to the Dispute Tribunal in 2011.

[c] Includes all open cases that were not resolved in 2011 and were carried over to 2012.

[d] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011. Does not include 1 case that was dismissed.

Table 10
Office of the United Nations High Commissioner for Refugees, outcome of cases at the United Nations Dispute Tribunal, as at 31 December 2011

Type of case	*Cases appealed to Dispute Tribunal*[a]	*Outcome of cases at Dispute Tribunal*[b] *Upheld*	*Partially upheld*	*Overturned*	*Pending*
Employment[c]	45	9	2	2	17
Disciplinary	–	–	–	4	–
Total	**45**	**9**	**2**	**6**	**17**

[a] Includes all cases that were appealed to the Dispute Tribunal in 2011 or were appealed to the Tribunal in 2010 or earlier and carried over into 2011.

[b] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011. Does not include 11 cases that were withdrawn or dismissed.

[c] Includes all non-disciplinary cases, including cases for which a management evaluation was conducted and other non-disciplinary cases that proceeded directly to the Dispute Tribunal.

(h) *United Nations Office for Project Services*

140. As it is relatively small, UNOPS has not received many cases. The Legal Practice Group handles such cases, with a legal officer at headquarters who is responsible, inter alia, for monitoring developments in the justice system (including the jurisprudence and practices of the Dispute and Appeals Tribunals). Each case filed with the Dispute Tribunal, as well as any issue that may lead to a case, including requests for management evaluation, is managed by the UNOPS legal officer in whose regional office the case or issue arose, supported by the legal officer at headquarters. This work is conducted under the overall supervision of the UNOPS General Counsel. In line with Secretary-General's bulletin ST/SGB/2008/13, the Office of Legal Affairs manages all appeals concerning UNOPS to the Appeals Tribunal.

141. The tables below provide statistical information on the number of matters handled within UNOPS and their disposition.

Table 11

United Nations Office for Project Services, management evaluation cases, as at 31 December 2011

Total management evaluation cases received[a]	*Cases upheld*	*Cases settled*[b]	*Cases appealed to Dispute Tribunal*[c]	*Cases carried forward*[d]	*Outcome of cases at Dispute Tribunal*[e]			
					Upheld	*Partially upheld*	*Overturned*	*Pending*[f]
4	3	1	2	–	–	–	–	2

[a] Includes 1 case carried over from 2010 and earlier and 3 cases received in 2011, but does not include cases filed with the Dispute Tribunal before 2011.

[b] Includes all cases where the matter was settled in whole or in part as a result of management evaluation and cases where management evaluation was completely in favour of staff member but the matter did not settle.

[c] Includes all cases that were appealed to the Dispute Tribunal in 2011.

[d] Includes all open cases that were not resolved in 2011 (i.e., management evaluation not completed before 1 January 2012) and were carried over to 2012.

[e] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011 (including cases filed with the Dispute Tribunal before 2011).

[f] Does not include one judgement on compensation in a case in which a judgement on liability had been delivered in 2010.

Table 12

United Nations Office for Project Services, disciplinary cases, as at 31 December 2011

Total disciplinary cases received[a]	*Total disciplinary measures imposed*[b]	*Cases appealed to Dispute Tribunal*[c]	*Cases carried forward*[d]	*Outcome of cases at Dispute Tribunal*[e]			
				Upheld	*Partially upheld*	*Overturned*	*Pending*
4	3	2	1	–	–	–	1

[a] Includes one case carried over from 2010 and earlier and three cases received in 2011, but does not include cases filed with the Dispute Tribunal before 2011. Does not include a matter involving a staff member who resigned before charges could be brought.

[b] Includes one case in which a sanction was agreed to. There were no cases in which it was decided that no disciplinary measure was warranted.

[c] Includes all cases that were appealed to the Dispute Tribunal in 2011.

[d] Includes all open cases that were not resolved in 2011 and were carried over to 2012 (i.e., cases in which no disciplinary measure was imposed before 1 January 2012).

[e] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011, and cases filed with the Dispute Tribunal before 2011.

Table 13

United Nations Office for Project Services, outcome of cases at the United Nations Dispute Tribunal, as at 31 December 2011

Type of case	*Cases appealed to Dispute Tribunal*[a]	*Outcome of cases at Dispute Tribunal*[b]			
		Upheld	*Partially upheld*	*Overturned*	*Pending*
Employment[c]	2	–	–	–	2
Disciplinary	1	–	–	–	1
Total	**3**	**–**	**–**	**–**	**3**

[a] Includes all cases that were appealed to the Dispute Tribunal in 2011 or were appealed to the Tribunal in 2010 or earlier and carried over into 2011, but does not include one judgement on compensation issued in 2011 in a case in which the Dispute Tribunal had issued a judgement on liability before 2011.

[b] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011. Does not include one judgement on compensation in a case in which a judgement on liability had been issued in 2010.

[c] Includes all non-disciplinary cases, including cases for which a management evaluation was conducted and other non-disciplinary cases that proceeded directly to the Dispute Tribunal.

(i) United Nations Population Fund

142. The Legal Unit of the United Nations Population Fund (UNFPA) is an administrative unit established in the Office of the Executive Director. The Unit provides a range of legal support and advisory services to the UNFPA country and field offices as well as to offices and divisions at UNFPA headquarters. The Unit assists management in alternative dispute resolution, steers the management evaluation function and represents UNFPA before the United Nations Dispute Tribunal. The Unit recently recruited an additional legal specialist and is now made up of three staff members. UNFPA continues to pay special attention to management

evaluation and to various options involving alternative dispute resolution, including mediation.

143. The tables below provide statistical information on the number of matters of handled within UNFPA and their disposition.

Table 14
United Nations Population Fund, management evaluation cases, as at 31 December 2011

Total management evaluation cases received[a]	*Cases upheld*	*Cases settled*[b]	*Cases appealed to Dispute Tribunal*[c]	*Cases carried forward*[d]	*Outcome of cases at Dispute Tribunal*[e]			
					Upheld	*Partially upheld*	*Overturned*	*Pending*
6	3	3	1	–	–	1	1	5

[a] No cases were carried over from 2010 or earlier; all 6 cases were received in 2011.
[b] Includes all cases where the matter was settled in whole or in part as a result of management evaluation.
[c] Includes all cases that were appealed to the Dispute Tribunal in 2011.
[d] Includes all open cases that were not resolved in 2011 and were carried over to 2012.
[e] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011.

Table 15
United Nations Population Fund, disciplinary cases, as at 31 December 2011

Total disciplinary cases received[a]	*Total disciplinary measures imposed*	*Cases appealed to Dispute Tribunal*[b]	*Cases carried forward*[c]	*Outcome of cases at Dispute Tribunal*[d]			
				Upheld	*Partially upheld*	*Overturned*	*Pending*
17	3	2	12	–	–	1	2

[a] Includes 3 cases carried over from 2010 and earlier and 14 cases received in 2011.
[b] Includes all cases that were appealed to the Dispute Tribunal in 2011.
[c] Includes all open cases that were not resolved in 2011 and were carried over to 2012.
[d] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011.

Table 16
United Nations Population Fund, outcome of cases at the United Nations Dispute Tribunal, as at 31 December 2011

Type of case	*Cases appealed to Dispute Tribunal*[a]	*Outcome of cases at Dispute Tribunal*[b]			
		Upheld	*Partially upheld*	*Overturned*	*Pending*
Employment[c]	1	–	1	1	5
Disciplinary	2	–	–	–	2
Total	**3**	**–**	**1**	**1**	**7**

(Footnotes on following page)

(Footnotes to Table 16)

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[a] Includes all cases that were appealed to the Dispute Tribunal in 2011 or were appealed to the Tribunal in 2010 or earlier and carried over into 2011.

[b] Includes all cases that were disposed of by the Dispute Tribunal in 2011 or were pending before the Tribunal as at 31 December 2011.

[c] Includes all non-disciplinary cases, including cases for which a management evaluation was conducted and other non-disciplinary cases that proceeded directly to the Dispute Tribunal.

2. Representation of the Secretary-General before the Appeals Tribunal

Office of Legal Affairs

144. As the central legal service of the Organization, the Office of Legal Affairs of the Secretariat provides legal advice to the Secretary-General, Secretariat departments and offices, funds and programmes and United Nations organs in a number of areas, including the administration of justice system. Within the Office, the organizational unit entrusted with the responsibility for providing legal advice regarding administration and management matters is the General Legal Division. The responsibilities of the Division regarding these matters range from legal advice in the preparation of administrative issuances to representation of the Secretary-General before the United Nations Appeals Tribunal.

145. The Division legally clears every administrative issuance relating to human resources management policy prior to its promulgation. The Division also provides advice on legal matters before an administrative decision is taken, including in relation to recommendations for the dismissal of staff members.

146. In addition, the Division reviews and analyses each and every judgement of the Dispute Tribunal and the Appeals Tribunal, thereby developing a comprehensive view of the jurisprudence in the administration of justice system. The Division draws on this analysis when it provides legal advice during the early stages of a claim advanced by a staff member, well before such a claim has progressed to litigation. The Division also uses this analysis to provide case-specific advice to the entities representing the Secretary-General at the first level of the judicial process and to brief them generally on legal developments. Such advice and briefing ensures coordination and consistency in the legal strategies and arguments advanced by the Secretary-General on issues of policy and principle. The Division further uses this analysis when determining whether appealing a given judgement of the Dispute Tribunal is in the interest of the Organization.

147. The Division is also responsible for the representation of the Secretary-General before the Appeals Tribunal. This responsibility encompasses both the filing of appeals against judgements of the Dispute Tribunal and responding to appeals filed by staff members. It also involves filing motions and responses to motions, as well as oral advocacy in support of the written submissions of the Secretary-General at hearings before the Appeals Tribunal.

148. In 2011, the Division reviewed 307 judgements of the Dispute and Appeals Tribunals. The Division also filed 117 submissions in cases before the Appeals Tribunal in which the Secretary-General was a party.

149. In 2011, the Appeals Tribunal issued 80 judgements in cases in which the Secretary-General was a party. The Division obtained a favourable outcome for the

Secretary-General in 80 per cent of these judgements. Moreover, in the judgements on appeals filed by the Division, the Appeals Tribunal reduced or vacated the awards set by the Dispute Tribunal in an amount of more than $1.5 million.

III. Responses to questions relating to administration of justice

A. Overview

150. The following section responds to the queries set out by the General Assembly in resolution 66/237.

B. Responses

1. Institutionalization of good management practices

151. In paragraph 11 of resolution 66/237, the General Assembly requested the Secretary-General to make every effort to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace.

152. In providing assistance to the Under-Secretary-General for Management, the Management Evaluation Unit reviews requests while identifying trends and systemic issues, which are subsequently set out in its reports. The Unit also provides support to the Under-Secretary-General in the compilation of the lessons-learned guide for managers and guidance notes that are circulated to all heads of offices and departments, and through them to their managers. The current three lessons-learned guides for managers include a review of the jurisprudence of the Dispute and Appeals Tribunals and examine how the judgements interpret and apply the internal laws of the Organization.

153. The Secretary-General consistently makes every effort to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace, in particular a lack of timely and open dialogue in performance evaluation issues between managers and staff members, a lack of full understanding by managers of the internal laws and procedures of the Organization, a lack of clarity of some elements of the laws and the general managerial challenges of making and communicating administrative decisions.

154. Good management practices are being identified from the work of the Management Evaluation Unit. The judgements of the Tribunals further provide important guidance as to the interpretation and application of the internal laws. Management evaluation letters serve as a very important instrument as they contain a detailed and reasoned explanation setting out the basis for the evaluation. The outcome and lessons learned from the management evaluation process are also included in biannual reports of the Unit, which highlight, among other things, systemic and problematic issues for managers.

2. Accountability of managers

155. In paragraph 41 of resolution 66/237, the General Assembly requested the Secretary-General to submit information on the concrete measures taken to enforce

accountability in cases where contested decisions have resulted in awards of compensation to staff.

156. The Secretary-General has various ways in which to take concrete measures to realize accountability as a result of management evaluation requests and judgements of the Dispute and Appeals Tribunals, including:

(a) To modify or change the impugned decision where it has been determined that the manager has improperly exercised his or her delegated authority when making that decision, thereby withdrawing the decision-making authority of the manager for that particular decision;

(b) To speak to the manager at issue concerning the contested decision, explaining why the decision was improper and discussing lessons learned;

(c) To refer a case for investigation, where it has been determined that the improper exercise of delegated authority by the manager might rise to the level of possible misconduct;

(d) To reflect, in the performance evaluation of the manager, failure by a manager to comply in a timely manner with requests from the Management Evaluation Unit for comments or explanations relating to decisions taken by the manager;

(e) To place a note on the official status file of the manager at issue taking note of the improper decision, subject to the provisions of ST/AI/292 on filing of adverse material in personnel records;

(f) To introduce specific performance evaluation objectives for the manager, where it has been determined that the contested decision was taken as a result of poor management;

(g) To require a manager to attend training in light of the taking of an improper decision;

(h) To decide that the performance of a manager specifically be assessed in view of the poor administrative decision that was reversed.

157. Pursuant to article 10 (8) of the Statute of the United Nations Dispute Tribunal, the Dispute Tribunal may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability. In 2011, the Dispute Tribunal referred one such case.

3. Issues relevant to review of statutes of the Tribunals

158. In paragraph 14 of resolution 66/237, the General Assembly requested the Secretary-General to submit an updated report on issues relevant to its review of the statutes of the Tribunals.

159. At this time there are no additional issues relevant to a review of the statutes of the Tribunals to bring to the attention of the General Assembly.

4. Measures to encourage recourse to informal resolution of disputes

160. In paragraph 16 of resolution 66/237, the General Assembly requested the Secretary-General to recommend additional measures to encourage recourse to informal resolution of disputes and to avoid unnecessary litigation.

161. The recommendations of the Secretary-General regarding additional measures to encourage recourse to informal resolution of disputes and to avoid unnecessary litigation are included in his report on the activities of the Office of the United Nations Ombudsman and Mediation Services provided to the sixty-seventh session of the General Assembly.

5. Revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services

162. In paragraph 19 of resolution 66/237, the General Assembly requested the Secretary-General to work with the funds and programmes to finalize revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services that reflect the responsibility of the United Nations Ombudsman for the oversight of the entire office and enhance the coordination among the three pillars of the Office, and to submit a report thereon to the General Assembly at the main part of its sixty-seventh session.

163. In resolution 62/228, the General Assembly supported reform of the ombudsman function in the United Nations system based on the proposal of the Redesign Panel on the United Nations system of administration of justice. This external panel of experts envisioned a reform from a system which previously consisted of different Ombudsman offices and proposed an expanded, integrated and geographically decentralized Office of the Ombudsman which could unify the currently disparate and overlapping informal dispute-resolution processes and thus provide a valuable complement to the formal justice system. In their estimation, the Office held the most promise as a viable and integrated alternative dispute-resolution institution in the United Nations system. The Secretary-General supported this reform and the new entity, the United Nations Ombudsman and Mediation Services, was established (see A/61/205).

164. In resolution 66/237, the General Assembly subsequently requested the Secretary-General to finalize revised terms of reference for the Office of the United Nations Ombudsman. The process consisted of input by external experts, review by the Staff Management Committee, extensive consultations between the Secretariat, the funds and programmes and UNHCR, input by the substantive department and, finally, review and final decision by the Secretary-General.

165. The terms of reference are under review for promulgation by the Secretary-General and reinforce the critical role which the Office of the United Nations Ombudsman and Mediation Services plays in the informal resolution of conflict in the United Nations. The Secretary-General is strongly supportive of the terms of reference and of the single office structure of the Office envisioned by the Redesign Panel and the General Assembly, which offers enhanced service and access for all staff, particularly for those away from Headquarters who previously did not have easy access to these services. The new terms of reference broadly outline support for continued dedicated informal conflict resolution for staff of all entities served by the Office. It also outlines the important emphasis to serve staff in the field by the

creation of geographically decentralized regional offices and outlines the operations of a mediation service. Finally, it reinforces the critical internationally recognized principles of independence, neutrality, impartiality, confidentiality and informality on which the Office operates.

6. Recommendations addressing systemic and cross-cutting issues

166. In paragraph 21 of resolution 66/237, the General Assembly indicated that it welcomed the recommendations made by the Office of the United Nations Ombudsman and Mediation Services to address systemic and cross-cutting issues and requested the Secretary-General to submit to the Assembly a report containing his views on the recommendation.

167. The views of the Secretary-General on the recommendations of the Office of the United Nations Ombudsman and Mediation Services addressing systemic and cross-cutting issues are set forth in annex I.

7. More coherent representation and efficient use of resources

168. In paragraph 23 of resolution 66/237, the General Assembly requested the Secretary-General to explore all possible ways to bring about more coherent representation and efficient use of resources, taking into account the specificities of representation of the Secretary-General at the Tribunals and to report thereon to the Assembly. That report is presented below.

(a) Current structure and its rationale

169. The Secretary-General is represented before the Dispute Tribunal by the Administrative Law Section in the Office of Human Resources Management; legal staff located in the human resources services of the United Nations Office at Geneva and the United Nations Office at Vienna, the office of the Director General at the United Nations Office at Nairobi, the Office for Operations in UNEP, the Legal Unit of UN-Habitat, and legal staff in the separately administered funds and programmes (UNICEF, UNHCR, UNDP, UNFPA and UNOPS).

170. The Secretary-General is represented before the Appeals Tribunal by the Office of Legal Affairs, which performs this function with respect to all cases involving offices and departments of the Secretariat, including peacekeeping missions, as well as the funds and programmes.

171. The focus of the proceedings in the administration of justice system differs between the Dispute Tribunal and the Appeals Tribunal. Before the Dispute Tribunal, the emphasis is on establishing the facts. Before the Appeals Tribunal, issues of law are most significant. The division of labour in the representation of the Secretary-General corresponds to these differing demands.

172. The Secretary-General, in dividing the responsibility for representation before the Dispute Tribunal and the Appeals Tribunal, has sought to develop expertise specific to representation before each of the Tribunals. The lawyers that represent the Secretary-General before the Dispute Tribunal have developed proficiency in the collection and review of documents and the recording of witness statements. They have also developed skills in presenting documentary evidence and in examining and cross-examining witnesses at oral hearings. The lawyers that represent the Secretary-General before the Appeals Tribunal have developed proficiency in the

review of Dispute Tribunal judgements for potential errors. They have also developed skills in legal research, preparation of definitive legal submissions and oral argument at an appellate level. By accumulating expertise in representation before each Tribunal, the aim has been to develop lawyers with the ability to most effectively handle cases before a specific Tribunal.

(b) *Alternative to the current structure*

173. The question has been posed as to whether the representation of the Secretary-General before both Tribunals should be carried out by the Office of Legal Affairs in order to use resources more efficiently. It is the considered view of the Secretary-General that such restructuring will not provide operational advantages or cost-savings.

174. The consolidation of the responsibilities for representing the Secretary-General before both Tribunals would not mean that some work would be eliminated and thereby cost-savings could be generated. On the contrary, the same amount of work would still need to be carried out, regardless of whether it would be done by lawyers in the same or different offices. The same amount of work would also need to be done if the same lawyer handled a case before the Dispute Tribunal and the Appeals Tribunal. The same amount of evidentiary and legal submissions would be required. The same number of hearings would need to be attended. Therefore, the performance of all representational functions within a single office would not lead to a more efficient use of resources or any financial savings.

175. Rather, consolidating the responsibilities for representing the Secretary-General in the Office of Legal Affairs would introduce delays and a loss of efficiency in the short and medium term, as it would require significant reorganization of the offices involved, not only the Office of Legal Affairs and the Office of Human Resources Management, but also the human resources services of the United Nations Offices at Geneva and at Vienna, the office of the Director General at the United Nations Office at Nairobi, the Office of Operations in UNEP, the Legal Unit in UN-Habitat and, potentially, the legal staff in the funds and programmes. Entire budgetary lines would need to be transferred from those various offices to the Office of Legal Affairs. The lawyers representing the Secretary-General before the Dispute Tribunal would need to be transferred to the Office of Legal Affairs, or new lawyers would need to be recruited by the Office to handle cases before both Tribunals. The Office would also need to set up sub-offices, such as in Geneva and Nairobi, in order to represent the Secretary-General before the Dispute Tribunal at those locations, and the establishment of such sub-offices would entail significant cost implications and further delays.

8. Options for representation of staff members, including a mandatory staff-funded mechanism to support the Office of Staff Legal Assistance

176. In paragraph 28 of resolution 66/237, the General Assembly requested the Secretary-General to submit, after consultation with the Internal Justice Council and other relevant bodies, a comprehensive report proposing different options for the representation of staff members before the internal Tribunals, taking into account all relevant resolutions and reports, including the letters of the Sixth Committee to the Fifth Committee, and the relevant recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report, including a detailed

proposal for a mandatory staff-funded mechanism, reflecting, if necessary, the implications of the different proposals, for consideration by both the Fifth Committee and the Sixth Committee, in their respective capacities, at the sixty-seventh session.

177. The report of the Secretary-General proposing different options for the representation of staff members before the internal Tribunals and a mandatory staff-funded mechanism is contained in annex II.

9. Practice of tribunals in other international organizations and in Member States regarding the awarding of exemplary or punitive damages

178. In paragraph 34 of resolution 66/237, the General Assembly requested the Secretary-General to report on the practice of Member States and tribunals in other international organizations comparable to the Dispute and Appeals Tribunals regarding the awarding of exemplary or punitive damages, including their practice with regard to awards for moral damages, emotional distress, procedural irregularities and violations of due process.

179. Pursuant to this request, the Secretariat sought information from all Member States and from registries and secretariats of comparable international administrative tribunals in respect of their practice. The Secretariat received responses from seven Member States and seven international administrative tribunals. The replies received are summarized in annex III to the present report. The full responses are on file with the Secretariat and may be made available upon request.

180. Some broad conclusions may be drawn from the practice disclosed by this initial comparative survey. As a general matter, both international and national legal regimes in the area of public employees permit compensation for moral (or non-pecuniary) injury, which may be characterized in a variety of often overlapping ways. Emotional or mental harm or distress is a common subset of this type of injury. At the same time, there are instances where monetary caps are set in law in respect of certain forms of awards, such as for due process violations. The weight of practice tends against exemplary or punitive damages in this public sector area. Generally, despite the uncertainties inherent in assessing quantum of damage for such harm, moral injury — however precisely defined — must be individually established and must rise to a level of harm significant enough to justify the award of compensation. In the area of due process, some systems tend to assume that material violations of themselves justify compensation, whereas elsewhere victims need to demonstrate specific harm resulting from due process violations before an award of compensation can be made.

181. Given the relatively narrow range of feedback provided, the Secretary-General is of the view that it would be useful to receive further information on this matter from Member States that did not provide information by the time the present report was prepared. Accordingly, the Secretary-General recommends that the General Assembly request further reporting on this issue to be submitted to its next session.

10. Expedited arbitration procedures for consultants and individual contractors

182. In paragraph 38 of resolution 66/237, the General Assembly requested the Secretary-General to submit a report providing: (a) a proposal for implementing the

proposed mechanism for expedited arbitration procedures for individual contractors and consultants provided in annex II to the 2011 report of the Secretary-General on administration of justice, including the cost implications for various aspects of the proposal; and (b) an analysis of the policy and financial implications in the event that individual contractors and consultants covered by the proposed expedited arbitration procedures were to be permitted access to mediation under the informal system.

183. The proposal of the Secretary-General on a mechanism for expedited arbitration procedures for individual contractors and consultants is set forth in annex IV to the present report.

184. The analysis by the Secretary-General on the policy and financial implications of permitting individual contractors and consultants access to mediation under the informal system is set forth in annex V to the present report.

11. Access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes

185. In paragraphs 39 and 40 of resolution 66/237, the General Assembly requested the Secretary-General to submit a report on access to the system of administration of justice for different categories of non-staff personnel who are not covered under the dispute resolution mechanism proposed in annex II of the report of the Secretary-General contained in document A/66/275 and Corr.1 and measures to be made available with regard to the informal and formal aspects of the system of administration of justice to assist such non-staff personnel to address disputes that may arise.

186. The report of the Secretary-General on access to the system of administration of justice by non-staff personnel and measures to be made available with regard to the informal and formal aspects of the system of administration of justice to assist such non-staff personnel to address disputes that may arise is set forth in annex VI to the present report.

12. Status of the agreement on a cost-sharing arrangement for the totality of the internal justice system

187. In paragraph 43 of resolution 66/237, the General Assembly requested the Secretary-General to make every effort to expedite the finalization of an agreement on a cost-sharing arrangement for the totality of the internal justice system and to report thereon, including on the expected reimbursement of approximately $6.8 million from the participating United Nations entities, to the General Assembly at the main part of its sixty-seventh session.

188. With respect to the memorandum of understanding, while it has not yet been concluded, the parties have made major progress, and except for the component of the Office of the Ombudsman, which is pending until agreement is reached on its terms of reference, all issues have now been resolved. As stated in paragraph 165, the terms of reference are under review for promulgation by the Secretary-General.

189. Further to the agreements that have been reached by the parties on the way forward, the Secretariat has received partial reimbursement from some of the

participating United Nations entities for the costs incurred for the biennium 2010-2011 in the total amount of $2,358,348 as shown in table 17 below.

Table 17
Reimbursement received from participating United Nations entities

Organization	*Amount due (United States dollars)*	*Amount received (United States dollars)*
UNHCR	1 578 888.93	–
UNICEF	2 335 600.37	–
UNDP	1 964 348.97	1 964 348.97
UNFPA	584 743.95	–
UNOPS	243 404.01	243 404.01
UNFCCC	105 515.57	105 515.57
UN-Women	45 079.52	45 079.52
Total	**6 857 581.32**	**2 358 348.07**

190. It is expected that the remaining amounts due from the other United Nations entities shall be reimbursed upon the signature of the memorandum of understanding. Funds received were treated as miscellaneous income and credited to the United Nations General Fund.

13. Proposals and analysis for a mechanism for addressing possible misconduct of judges

191. In paragraph 44 of resolution 66/237, the General Assembly requested the Secretary-General to submit a report providing proposals and analysis for a mechanism for addressing possible misconduct of judges, as well as additional views or analysis with regard to the proposals contained in the reports of the Secretary-General on administration of justice at the United Nations (A/63/314, paras. 73-79, and A/66/275 and Corr.1, paras. 55-60) and in the reports of the Internal Justice Council (see A/65/304, para. 40, and A/66/158, para. 7), as well as other proposals, including a proposal for a new mechanism for addressing such misconduct, consisting of one jurist from the highest judicial tribunal drawn from one Member State from each of the five geographical regions appointed or elected by the General Assembly to serve when and as needed.

192. The report of the Secretary-General providing proposals and analysis for a mechanism for addressing possible misconduct of judges is contained in annex VII to the present report.

14. Recommendations and analysis regarding a code of conduct for legal representation

193. In paragraph 46 of resolution 66/237, the General Assembly requested the Secretary-General to submit a report providing his recommendations and analysis regarding the proposal on a code of conduct for legal representation in the report of the Internal Justice Council. The report of the Secretary-General is contained in annex VIII to the present report.

15. Monetary compensation awarded by the Tribunals

194. In the seventh report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2012-2013 (A/66/7/Add.6), the Advisory Committee requested that information on the level of compensation awarded by the Tribunals and paid out to staff members and former staff members continue to be included in future reports of the Secretary-General on the administration of justice.

195. The information on the level of compensation awarded by the Tribunals as well as the Management Evaluation Unit and paid out to staff members and former staff members is contained in annex IX to the present report. Information on compensation awarded by the Management Evaluation Unit is also included.

IV. Resource requirements

196. The Secretary-General has identified various areas in the formal justice system requiring strengthening in order to fulfil the mandate of the new system. For the reasons set out above, the Secretary-General recommends that the General Assembly consider enhancing the formal justice system with the following resources in addition to those already approved in the programme budget for the biennium 2012-2013:

(a) With respect to the Management Evaluation Unit, for the reasons set out in paragraphs 15 to 17 above, the Secretary-General recommends that the General Assembly approve one additional P-3 legal officer post for the Management Evaluation Unit for a period of six months to be funded from the budget for the support account for peacekeeping operations;

(b) With respect to the Dispute Tribunal and its Registries, for the reasons set out in paragraphs 32 through 37 above, the Secretary-General recommends that the General Assembly extend the three sitting ad litem judges from 1 January to 31 December 2013 and approve for the same period under general temporary assistance the current staffing complement for the ad litem judges;

(c) With respect to the Office of Staff Legal Assistance, for the reasons set out in paragraph 63 above, the Secretary-General recommends that the legal officer (P-3) post, established by resolution 65/251 effective 1 January 2011, currently funded from the support account for peacekeeping operations, be extended for a further six-month period.

197. **Accordingly, should the General Assembly approve the above proposals, additional resource requirements in the amount of $1,688,300 net ($1,793,900 gross) would be required under the programme budget for the biennium 2012-2013.**

V. Conclusions and actions to be taken by the General Assembly

198. **The Secretary-General requests the General Assembly to give due consideration to the recommendations and proposals contained in the present report and to approve the resources necessary to provide additional support to the system of administration of justice.**

199. **Accordingly, the Secretary-General requests the General Assembly to:**

(a) **Approve one additional P-3 legal officer post for the Management Evaluation Unit for a period of six months to be funded from the budget for the support account for peacekeeping operations, and the related costs to be reported in the context of the performance report relating to the support account for peacekeeping operations for the period from 1 July 2012 to 30 June 2013;**

(b) **Approve the extension of the three sitting ad litem judges, as general temporary assistance, from 1 January to 31 December 2013;**

(c) **Approve the extension of the staff complement of the ad litem judges, under general temporary assistance, from 1 January to 31 December 2013, comprised of three Legal Officers (P-3) and three Administrative Assistants (two General Service, Other level and one General Service, Local level);**

(d) **Approve the continuation of the legal officer (P-3) post in the Office of Staff Legal Assistance in Nairobi, effective 1 January 2013, for an additional six-month period, to be funded from the budget for the support account for peacekeeping operations, and the related costs to be reported in the context of the performance report relating to the support account for peacekeeping operations for the period from 1 July 2012 to 30 June 2013 (the continuation of the P-3 position beyond 30 June 2013 will be proposed in the context of the budget of the support account for peacekeeping operations for the 2013/14 financial period);**

(e) **Appropriate a total amount of $1,688,300 net ($1,793,900 gross) for the programme budget for 2012-2013, under section 1, Overall policymaking, direction and coordination ($1,645,400), section 29D, Office of Central Support Services ($42,900) and section 37, Staff assessment ($105,600), to be offset by a corresponding amount under income section 1, Income from staff assessment;**

(f) **Pursuant to paragraph 28 of resolution 66/237, take note of the various options contained in annex II for the representation of staff members before the internal Tribunals and a mandatory staff-funded mechanism for the Office of Staff Legal Assistance, and, pursuant to paragraph 28 of resolution 66/237, request the Fifth Committee and Sixth Committee, in their respective capacities, to consider the question of whether a mandatory staff-funded scheme for the Office is consistent with the Charter of the United Nations and, in particular, with Article 17, paragraph 2, thereof;**

(g) **Take note that the introduction of expedited arbitration procedures to resolve disputes with consultants and individual contractors would require significant additional resources for the Organization as set out in annex IV, and recall that the Organization currently offers a mechanism for the resolution of disputes with consultants and individual contractors through arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law and remain seized of the matter;**

(h) **Consider the analysis of the financial implications in the event that individual contractors and consultants were to be permitted access to mediation under the informal system (as described in annex V) and decide on this matter. In the event that the General Assembly decides to grant access for these**

categories of staff to the informal system, there would be financial implications as indicated in annex V;

(i) Endorse the preparation of a code of conduct for legal representatives who are external individuals and not staff members, and request the Office of Administration of Justice to coordinate the preparation of such a code of conduct, in consultation with the legal representatives of the Secretary-General and of the staff, the Tribunals and the Internal Justice Council.

Annex I

Views of the Secretary-General on the recommendations of the Office of the United Nations Ombudsman and Mediation Services on measures addressing systemic human resources issues

A. Introduction

1. The present report addressing the issues identified in the reports of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/66/224 and A/65/303) is submitted by the Office of Administration of Justice pursuant to General Assembly resolutions 66/237, 66/207, 64/233 and 63/253. Due to the number and length of the recommendations, they have not been replicated here, but have been summarized, with responses provided as appropriate.

B. Systemic issues identified by the Secretariat

1. Job and career

(a) Issues identified

2. The recommendations in section II.B.1 of the report of the Secretary-General contained in document A/66/224 and in section III.B.1 of the report of the Secretary-General contained in document A/65/303 deal with a range of job and career issues, such as mobility, performance management and reference checks.

(b) Measures taken

3. With regard to the requests for a developed mobility policy, the Office of Human Resources Management, in collaboration with the Field Personnel Division of the Department of Field Support, has been working on a structured approach to mobility. In this context it should be noted that voluntary programmes such as VINES were able to move only a limited number of people. The lessons learned from VINES, as well as best practices in other United Nations organizations, are being addressed in the development of the new policy. While the primary focus is on developing a mechanism for mobility for the entire Secretariat, it is also being explored whether there may be opportunities for mobility to and from agencies, funds and programmes, where appropriate. While the policy will include more enhanced and targeted measures for career support to facilitate mobility, it should be noted that individual career counselling initiatives are very resource intensive.

4. Regarding the recommendation that managers should provide coaching and developmental support, the Office of Human Resources Management notes that the performance management system requires managers to provide coaching and development (ST/AI/2010/5, sect. 5 (1) (d)).

5. Regarding the recommendation for clear guidance on the circumstances in which the retirement age of 62 will be deemed to apply to staff who rejoined the Organization after 1 January 1990, in October 2010 the Under-Secretary-General for Management clarified that in line with staff rule 4.17, when a former staff member

is re-employed and given a new appointment, the terms of the new appointment shall be fully applicable without regard to any period of former service. Accordingly, for the purpose of staff regulation 9.2, the mandatory age of separation of such staff is determined to be 62.

6. Regarding reference checks, it is noted that all reference checks are completed before a letter of offer is issued. Candidates are given two months to make arrangements to have their schools and employers send reference letters to the Office of Human Resources Management, and the Office sends regular reminders. Where a selected candidate is required to be on board immediately to fulfil a mandate, the Office issues a provisional offer if the highest degree obtained by a candidate is verified. To expedite the reference checking process, the Office clears candidates based on a review of electronic copies.

7. To reinforce the ability to conduct reference checks as efficiently and effectively as possible, the Office is standardizing the practice of reference checks globally and centralizing the storage of data. As part of this, the Office is in the process of finalizing guidelines on carrying out reference checks to ensure consistency in practice. The guidelines address the process of checking references, the contents required to be checked and the practical situations that may be encountered by someone conducting reference checks. The guidelines provide for deadlines that should be observed for overall completion, reminders to candidates and receipt of release agreements from candidates.

8. The centralization of reference check data will start from the end of 2012 within Inspira. The references received on the qualifications of a candidate selected for a job opening on Inspira will be uploaded on Inspira and stored in a central database which will be accessible by human resource offices globally.

9. Finally, the organizations of the Human Resources Network of the United Nations System Chief Executives Board for Coordination have agreed that more coordination on reference checks is needed and they have agreed to explore possibilities in that regard.

2. Evaluative and peer and colleague relationships

(a) Issues identified

10. The recommendations in A/66/224, section II.B.2, and A/65/303, section III.B.2, deal with evaluative and peer and colleague relationships, in particular improving managerial skills such as performance management and conflict resolution and effective induction for managers.

(b) Measures taken

11. The issue of improving performance management skills is being addressed through the new mandatory performance management training. Incorporating lessons learned from managerial complaints in this training could be considered in coordination with the Office of the United Nations Ombudsman, which could also add value through raising awareness among staff and management of the benefits of informal resolution and resolution of grievances by means other than resorting to investigation and disciplinary mechanisms. The Department of Field Support and the Office of Human Resources Management will consider the feasibility of introducing performance indicators in the human resources management scorecard,

which would enable the effective and efficient identification of these matters and discussion in the Performance Management Board.

12. The Office of Human Resources Management continues to deliver conflict resolution programmes aimed at improving conflict resolution skills in the Organization. Issues pertaining to the respectful treatment of staff are addressed in the draft revised competency framework.

13. Regarding improved and streamlined induction and orientation for managers and senior managers, offices and departments have the option of requesting support from the Office for Human Resources Management (OHRM) for team interventions, including team building and planning.

3. Compensation and benefits and services and administration

(a) *Issues identified*

14. The recommendations in A/66/224, section II.B.3, and A/65/303, section III.B.5, deal with compensation and benefits and services and administration, in particular consistency in the application of conditions of service and clarity and responsiveness in communications about them.

(b) *Measures taken*

15. With regard to greater consistency of entitlements and benefits across the United Nations system, it is worth noting that ICSC is responsible for this and sets the rates of allowances and benefits that apply to all organizations of the United Nations common system. The United Nations agencies, funds and programmes have broad delegation of authority in human resources matters and, for operational reasons, there are therefore some variances among organizations. To the extent possible, the Secretariat and the United Nations agencies, funds and programmes do try to harmonize, for example through structures such as the Human Resources Network Standing Committee on Field Duty Stations.

16. Regarding consistency of application within the Secretariat, Human Resources Services in Headquarters has initiated weekly meetings to ensure better and more consistent understanding of human resources rules, policies and operations. Human Resources Services is also meeting and coordinating with the Policy and Conditions of Service Section on an as-needed basis. Working groups have been established to review induction practices and enhance communication and outreach. Internal training sessions have been initiated on various subjects, including on recording appointments in the Integrated Management Information System and on the mobility and hardship allowance to ensure more consistency. In addition, the current administrative instruction governing special post allowance is being revised, with a view towards streamlining the process for granting such allowances. However, as panels dealing with special post allowances were established in consultation with the staff, the recommendation to abolish the panels would require further consultation with staff representatives.

17. To support the work on improving consistency, Human Resources Services has also developed operational indicators in the human resources management scorecard and established baseline standards for human resources services. For the future it is planned that a human resources management tracking database will be developed to track, monitor and report on major activities of Human Resources Services.

18. In terms of improved communication on entitlements, the new Human Resources Services web page currently under development is expected to provide easy access for all staff to information on their entitlements, and will include a page to provide answers to frequently asked questions. Once Umoja is introduced it will also be possible for staff members to see the status of their requests at any time.

19. More broadly, the "It's for real" website provides staff with accessible, coherent, coordinated information on the full range of human resources matters including fact sheets and frequently asked questions.

4. Legal, regulatory, financial and compliance issues

(a) Issues identified

20. The recommendations in A/66/224, section II.B.4, and A/65/303, section III.B.4, deal with legal, regulatory, financial and compliance issues, in particular issues regarding harassment, conduct and discipline and the conduct of investigations.

(b) Actions taken

21. With regard to the recommendation that standard operating procedures should be put in place to deal with allegations of harassment, discrimination or abuse of power, the Secretary-General is aware that senior managers need support in this area. To that end, the Department of Management issued in December 2011 a guide for managers on their roles and responsibilities in investigations and disciplinary matters, based on lessons learned from the jurisprudence of the Dispute and Appeals Tribunals. With respect to matters specifically falling under ST/SGB/2008/5 on Prohibition of discrimination, harassment, including sexual harassment and abuse of authority, the Office of Human Resources Management regularly provides written and oral support to managers who are responsible for handling such matters. General written guidance on these matters is also being prepared by the Office, in consultation with the Ethics Office.

22. With regard to enhancing training related to the prevention of harassment and abuse of authority, the Office of Human Resources Management is participating in an inter-agency project to update and revise the existing online training on this subject by the end of 2012. This will include a module specifically focused on training for managers. In terms of in-person training, the Office is currently developing an orientation programme for senior leaders which will include guidance on the prevention of harassment and abuse of authority and on the system of administration of justice. This training is being developed in coordination with the Ethics Office and the Office of the United Nations Ombudsman and Mediation Services and is due to go live in 2013.

23. The Office of Human Resources Management is also reviewing options for the possible development of a certification programme for managers, which would include matters relating to prevention of harassment and abuse of authority.

24. For its part, the Ethics Office supports a number of initiatives designed to reinforce organization-wide commitment to accountability, integrity, transparency and respect. It also provides written guidance and managerial tools designed to (a) facilitate access to Secretariat resources (see *The Roadmap*, published in 2011); (b) apply United Nations behavioural standards and expectations to everyday work

circumstances ("Putting ethics to work: a guide for United Nations staff" will be published in 2012); and (c) enhance understanding and commitment to United Nations ethical principles (see the updated website of the Ethics Office at www.un.org/en/ethics). The Ethics Office collaborates with the Office of Human Resources Management, the Department of Field Support and the Department of Peacekeeping Operations in designing communications and outreach materials, such as the revision and re-launch of the online ethics and integrity training programme. As of 2011, the Ethics Office also provides confidential feedback to senior leaders on their development as ethical leaders, through an initiative to assess ethical leadership behaviour. The Office also provides one-on-one confidential ethics induction briefings to all incoming assistant secretaries-general and under-secretaries-general and group briefings to staff at the D-1 and D-2 levels. Beginning in 2012, the Ethics Office is launching a leadership dialogues programme, through which every staff member will participate annually in a guided dialogue session with his or her direct supervisor about a selected ethics theme.

25. With regard to investigations, in his report contained in document A/66/275 and Corr.1, the Secretary-General discussed the need to strengthen the timely management of disciplinary matters in an integrated manner, from reporting of misconduct through investigation to completion of the disciplinary process. The General Assembly subsequently endorsed the proposal in that report to run a pilot project, based in Nairobi, to test the feasibility of decentralizing critical elements of the administration of justice, the implementation of a fast-track approach for cases to be handled by the pilot project and the delegation of authority to place field staff on administrative leave with pay to the Under-Secretary-General for Field Support. The Secretary-General will be providing a comprehensive report on the pilot project to the Assembly at its sixty-eighth session.

26. With regard to keeping staff apprised of the progress of investigations, it is noted that investigations under Secretary-General's bulletin ST/SGB/2008/5 are conducted under the authority of heads of departments or offices. The Office of Human Resources Management provides advice to programme managers as to the conduct of these investigations, including in relation to the information to be provided to complainants at the beginning of an investigation and at its conclusion, if the matter is not referred for possible disciplinary action. If the matter is referred for possible disciplinary action, the Office notifies the complainant at the end of the process of the outcome of the investigation and actions taken. In circumstances where a staff member follows up on the status of their complaint in the interim, the Office will respond with a note on the status of his or her case and/or will provide guidance to programme managers as to an appropriate response to enquiries.

5. Organizational, leadership and management issues

(a) Issues identified

27. The recommendations in A/66/224, section II.B.5, and A/65/303, section III.B.3, deal with organizational, leadership and management issues, in particular how change management should be handled and conflict resolution.

(b) Measures taken

28. The issue of managing change effectively, including leadership, communication and participation of staff, was taken up by senior managers in a joint

management and policy committee meeting on 28 April 2011. At that meeting it was decided to set up a change management team to lead the change management process and move it forward. In terms of staff participation, staff were involved from the very start: for example, one of the first actions of the team was to request all departments and offices to collect and channel staff proposals for reforms through a focal point. The team sought input on all the change management proposals, including from staff focal points of the Staff Management Committee. It also developed a communications strategy, which included a dedicated intranet site, as well as iSeek stories, presentations and other communications materials for updating staff and managers in the Secretariat.

29. In its final report, the change management team put forward a series of change initiatives. One of the four key deliverables of the change plan is the need to enhance trust and confidence. Building trust between management and staff requires developing a culture of cooperation and greater transparency through improved communication with staff and more opportunities for staff to be heard. Specific proposals included a biennial staff survey to solicit regular and systematic input from staff and the development of a comprehensive internal communications strategy.

30. Following the approval of the change initiatives by the Secretary-General, the General Assembly in resolution 66/257 took note of the initiatives and requested the Secretary-General to submit to the Assembly for its consideration and prior approval any proposals or measures related to 29 of the 61 recommendations. The Secretary-General has since appointed a change implementation team to take this work forward.

31. On the specific issue of change in the field of human resources, "It's for real" is a coordinated communication tool that keeps staff up to date with all the latest developments in human resources management. Staff are also involved in the development of change; for example, the working group on mobility, itself made up of both management and staff representatives, specifically sought wider staff views by means of a global survey and focus groups.

32. Regarding the need to support managers in providing a harmonious work environment for their staff, there are a number of existing conflict resolution programmes which can be delivered on request to teams, work units and sections, tailored to their needs. In addition, team interventions, including those focused on conflict resolution, are available to work units and sections upon request and implemented regularly at Headquarters in New York, at Offices away from Headquarters and the regional commissions. These interventions are individually designed to meet the specific needs and situation of the work unit.

33. In order to advise and support decision makers in managing staff, the Department of Management issues lessons-learned guides to managers which summarize the jurisprudence of the Dispute and Appeals Tribunals, such as on selection and promotion procedures and decisions and non-renewal or termination of appointments, in order to provide a highly relevant managerial aid.

6. Safety, health, well-being, stress and work-life balance

(a) *Issues identified*

34. The recommendations in A/66/224, section II.B.6, and A/65/303, section III.B.6, deal with safety, health, well-being, stress and work-life balance especially crisis response, the health effects of stressful workplace conditions, particularly in the field, and the need to provide better work-life balance.

(b) *Measures taken*

35. Regarding the issue of effectively managing staff affected by crisis, the Emergency Preparedness and Support Team in the Office of Human Resources Management, in consultation with the Department of Safety and Security, the Department of Field Support and other stakeholders, is in the process of developing a pre-, during and post-crisis enhanced duty of care programme for the Organization. Specifically, preparedness is being addressed through building first-responder capacity at all duty stations through specialized training modules for staff and managers, scenario planning and templates. Based on lessons learned from previous crisis management events, a harmonized approach and framework will be established to enable a consistent approach to managing future events.

36. Regarding the recommendation that a comprehensive occupational health and safety policy should be established which takes into account the potential for adverse health consequences of poorly managed conflicts, this recommendation is accepted and will be implemented as the policy is developed.

37. Regarding the recommendation that the guidelines pertaining to the review of cases by the Medical Board should be revised to include the possibility of informal dispute resolution, a new administrative instruction on medical boards is currently being drafted, and consideration will be given to this recommendation in that context.

38. The proposal that the existing system-wide counselling services programme be strengthened and that staff counsellor services be made fully available until the end of mission mandates is in line with the recommendations of the Department of Safety and Security Critical Incident Stress Management Unit itself regarding the need to strengthen the capacity of the staff counselling in field missions. Consideration of the required additional resources, however, would be within the purview of the General Assembly

39. The report also recommends that the Organization enhance its ability to gather counselling resources as required and for the longer term rather than just in response to disasters. In addition it recommends that mobile teams of counsellors should be rotated periodically to the different regions. In this regard it is noted that the strategy of the Critical Incident Stress Management Unit is based on a multi-level approach at the country, regional and Headquarters levels. There is a contingency plan for each mission and at the regional level in coordination with stress and staff counsellors in the agencies funds and programmes. In addition the Unit has a network of mental health professionals in the different regions who can be approached by the missions as required.

40. The report also recommends that in order to ensure the well-being of staff and the quick settlement of employment-related concerns, response teams from the

Office of the United Nations Ombudsman be deployed. While additional mediation and other ombudsman services could be desirable, this would have significant resource implications which would need to be agreed by the General Assembly.

41. Regarding the recommendation that the Medical Services Division share experiences regarding concerns heard from staff in the field, and provide recommendations on how to address these, it should be noted that the Unit operates in coordination with both medical services and human resources in the context of the Critical Incident Stress Working Group. Lessons learned are drawn after every crisis. Critical Incident Stress Management Unit welcomes the participation of the Office of the United Nations Ombudsman as an observer in the deliberations of the Working Group and will share those lessons learned with that Office going forward.

42. Regarding helping staff cope with stressful work environments in the field, it is noted that the recommendation to have mandatory training for staff in stressful situations neither specifies numbers of staff to whom it applies nor defines what is meant by "stressful work environments". It is therefore difficult to interpret or implement such an open-ended recommendation, especially in the current financial climate.

43. The report also recommends the inclusion of stress management strategies as a competency to be tested during the interviews for managerial positions in the field. This would not be practical as the competency framework is Secretariat-wide. However, clearly interviewers would be at liberty to probe this area in general discussion. Regarding the provision of staff counsellors in every field operation, the importance of providing psychosocial support to United Nations staff members during emergency and non-emergency situations has been well established and extensively documented. The policy of the Unit is that every mission should have a counsellor, and where that is not the case the Unit advocates and lobbies for one to be appointed. In this regard, one suggestion is for a Staff Counselling Unit to be considered as a necessary and integral part of each peacekeeping and political mission from start to closing, regardless of its size. This would then render superfluous the recommendation in the report for mobile teams of counsellors.

44. Regarding the promotion of better work-life balance, flexible working arrangements are a key part of the change plan. A pilot project is currently under way to feed into the development of an expanded and revised policy on flexible work arrangements to be presented to the General Assembly.

Annex II

Options for representation of staff members, including a mandatory staff-funded mechanism to support the Office of Staff Legal Assistance

A. Introduction

1. At its sixty-sixth session, the General Assembly requested the Secretary-General to provide a comprehensive report proposing different options for representation of staff members before the internal Tribunals, including a detailed proposal for a mandatory staff-funded mechanism, reflecting, if necessary, the implications of the different proposals for consideration by the Fifth and Sixth Committees (resolution 66/237, para. 28).

2. The present report has been prepared in response to that request. It contains four sections. Section B contains options for representation of staff members before the internal Tribunals. Section C contains a detailed analysis of each of the three options for a mandatory staff-funded scheme for the Office of Staff Legal Assistance set out in the concept paper that was included in the report of the Secretary-General on administration of justice at the United Nations for the sixty-sixth session. It considers the advantages and disadvantages of each option and describes how each could work. Section D sets out implications for a mandatory scheme to be considered by the Assembly.

3. The contents of the present report have been circulated for consultation, including to the funds and programmes and to staff and management representatives at the Staff Management Committee meeting held in Arusha, United Republic of Tanzania, in June 2012. Their comments have been reflected herein. It has not been possible to consult with the Internal Justice Council since the new members are not yet in place.

B. Options for representation of staff members before the internal Tribunals

4. In this section, four options for representing staff members before the internal Tribunals are set out: (a) representation by the Office of Staff Legal Assistance; (b) representation by external counsel, either paid or pro bono; (c) representation by former or current staff; and (d) self-representation.

5. It should be noted that 282 cases were registered with the United Nations Dispute Tribunal in 2011. In 105 of those cases (37 per cent), the staff member was represented by the Office of Staff Legal Assistance, in 44 of the cases (16 per cent) by external private counsel, in 12 of the cases (4 per cent) by former or current staff members and in 121 of the cases (43 per cent) the staff member was self-represented.

6. In 2011, the United Nations Appeals Tribunal received 96 appeals, of which 89 arose from Dispute Tribunal judgements.[a] The Office represented staff members in 21 of the 89 appeals (24 per cent). In three appeals, the Office acted on behalf of current or former staff members who appealed Dispute Tribunal judgements, and in 18 cases it acted as counsel for staff members responding to appeals filed on behalf of the Secretary-General.

7. Of the 96 appeals, in 27 (28 per cent) staff members were represented by external private counsel; in 5 (5 per cent) by former or current staff members; and in 43 (45 per cent) staff members were self-represented.

1. Option of representation by the Office of Staff Legal Assistance

8. It was the position of the Redesign Panel and is the position of the Secretary-General that, consistent with the principle of making the new system of administration of justice more professionalized and decentralized, access to legal assistance provided by legally qualified full-time staff will help to ensure that both parties operate on equal footing in the formal justice system. Providing staff with legal counsel proficient in the Staff Regulations and Rules of the United Nations is in the interests of both staff members and the Organization (see A/62/294 and A/62/748 and Corr.1).

9. It is recalled that in administrative instruction ST/AI/351 and Amend.1, the Organization recognized the importance of providing advice or assistance and, where appropriate, representation for staff members by counsel as an important element in the administration of justice in the United Nations for decades before the establishment of the Office of Staff Legal Assistance. Under the former system, the Panel of Counsel provided free legal representation to staff members.

10. In its 2006 report, the Redesign Panel noted that the Panel of Counsel had the responsibility to provide legal assistance and representation to United Nations staff members in proceedings within the internal justice system (see A/61/205, para. 100). It also noted that there was a disparity in legal resources available to management and staff members (ibid., para. 106) and, in response, proposed to strengthen legal assistance for staff by ensuring that all counsel had proper legal credentials and that an office of staff legal assistance was adequately resourced with capacity in major duty stations and peace operations in the field (ibid., paras. 107, 109 and 110).

11. The Redesign Panel recommended the establishment of a professional office of counsel staffed by persons with legal qualifications recognized by courts of any Member State who would serve on a full-time basis and properly resourced (ibid., para. 107). Accordingly, the Office of Staff Legal Assistance was established to succeed the Panel of Counsel to strengthen the legal assistance provided to staff as an integral part of the new system of administration of justice (General Assembly resolution 62/228, para. 13).

12. The General Assembly also recognized that professional legal assistance is critical to the effective and appropriate utilization of the available mechanisms within the system of administration of justice (resolution 62/228, para. 12, and resolution 65/251, para. 35). At its sixty-third session, the General Assembly

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[a] The remaining seven appeals were in respect of decisions made by heads of entities that have concluded a special agreement with the Secretary-General under article 2.10 of the statute of the Appeals Tribunal.

decided that the role of professional legal staff in the Office of Staff Legal Assistance was to assist staff members and their volunteer representatives in processing claims through the formal system of administration of justice (resolution 63/253, para. 12). Subsequently, the General Assembly noted that the Office of Staff Legal Assistance represented staff members in cases before the Dispute Tribunal in New York, Geneva and Nairobi (resolution 65/251, para. 36).

13. At its sixty-sixth session, the General Assembly decided that the role of the Office of Staff Legal Assistance would continue to be that of assisting staff members and their volunteer representatives in processing claims through the formal system of administration of justice, including representation, pending further consideration of the issue by the General Assembly at its sixty-seventh session (resolution 66/237, para. 27).

14. Since the mandate of the Office of Staff Legal Assistance emanates from the General Assembly, its costs are funded by the Organization.

15. The following advantages have been identified with this option:[b]

(a) The Office provides free access to legal assistance from professional lawyers with expertise in the system of administration of justice on their contracts of employment and terms and conditions of appointment regardless of where they serve the Organization;

(b) The Office is an integral part of the accountability architecture of the United Nations. It helps ensure that improper administrative decisions are corrected and contributes to better decision-making in the Organization. This is often accomplished early on in the process so that matters are settled informally;

(c) The Office acts as a filter in the system of administration of justice by encouraging staff members to seek recourse to the informal system of justice and by declining representation in cases it considers unmeritorious (A/66/158, para. 39);

(d) The legal officers of the Office receive a fixed salary and therefore have no financial incentive to prolong proceedings;

(e) The Office is committed to the core values of the Organization.[c] Its legal officers must sign a written declaration in which they promise to, inter alia, exercise in all loyalty, discretion and conscience the functions entrusted to them as international civil servants of the United Nations and promise to respect the Staff Regulations and Rules (see staff regulation 1.1 (b)). The Office has also published "Guiding principles of conduct for Office of Staff Legal Assistance affiliated counsel in the United Nations",[d] which include obligations established in the Staff Regulations and Staff Rules such as truthfulness and confidentiality and the obligation to refrain from taking unmeritorious cases before the internal Tribunals (see A/62/294, para. 28);

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[b] See the report of the Internal Justice Council (A/67/98, paras. 50-52) in which the Council supported the continued role of the Office of Staff Legal Assistance of providing representation to staff members.

[c] See resolution 65/251. The General Assembly has recognized the role of the Office of Staff Legal Assistance in providing legal assistance to staff members in an independent and impartial manner.

[d] Available at http://www.un.org/en/oaj/legalassist/pdf/osla_consel_code_of_conduct.pdf.

(f) The Office helps ensure accessibility to justice since it ensures that staff members, particularly staff members serving in the field, have access to legal representation before the internal Tribunals.

16. The following disadvantages have been identified with this option:

(a) The Secretary-General is considered to be liable for the operational decisions of the Office of Staff Legal Assistance, over which he does not have control, that are taken in the representation of staff members by the Office. To date, there have been two cases in which the decision of the Office to decline to act on behalf of a staff member or the manner in which the Office represented the staff member were challenged;

(b) The possibility of obtaining free access to the Tribunals could be a factor for some staff members in some types of cases in deciding whether to resolve conflicts in the informal or formal system.

2. Option of representation by external counsel

17. In addition to the Office of Staff Legal Assistance, staff members are free to seek assistance and representation by external counsel, among other options. Indeed, the Redesign Panel recognized that the existence of a professional office of counsel would not preclude the possibility of recourse to outside counsel either on a pro bono basis or paid for personally by staff members (A/61/205, para. 108).

18. Staff members who retain external counsel pay for their own representation before the internal Tribunals.

(a) Representation by paid external counsel

19. While staff members may seek assistance, including representation from the Office of Staff Legal Assistance, at any time during the resolution process, they remain at liberty to engage private counsel at their own expense to assist and represent them before the internal Tribunals.

20. The following advantages have been identified for this option:

(a) External counsel could take cases that the Office would decline or be unable to take, including cases where the Office considers that it has a conflict of interest;

(b) Staff members would have greater flexibility to choose counsel whom they believe to best suit their needs and represent their interests;

(c) Staff members might feel more comfortable and have greater confidence seeking representation by external counsel who do not have a pre-existing contractual relationship with the Organization. This also would avoid potential litigation involving perceived conflict of interests involving the Office;

(d) External counsel are subject to the jurisdiction of their national bar associations, which would provide staff members with recourse to enforcement mechanisms to ensure that counsel act in accordance with their professional obligations;

(e) The issue set out in paragraph 16 (a) above would not arise.

21. The following disadvantages have been identified for this option:

(a) Two thirds of all staff members of the United Nations are employed in field operations away from Headquarters. Many such field operations are situated in post-conflict areas that have weak rule of law institutions and may have very few practising lawyers;

(b) Not all staff members are able to afford external lawyers whose fees might be prohibitively high, in particular for those staff members who are dismissed. National staff members and staff members in the General Service and related categories might likewise lack the financial means to retain the services of private lawyers (see A/62/748, para. 66);

(c) If external lawyers are compensated on a fee-for-service basis by way of hourly fees or contingency fees, they may have a financial incentive to expand the complexity of cases and promote litigation;

(d) External lawyers are not subject to the United Nations Staff Regulations and Rules and may pursue cases in a manner inconsistent with United Nations core values and culture;

(e) It has been previously noted that recourse to external lawyers for matters relating to employment at the United Nations is impractical and frequently counterproductive.[e] Providing legal assistance to staff members requires familiarity with the unique legal framework of the United Nations, including United Nations regulations and rules, mechanisms and judicial institutions, as well as the jurisprudence of the internal Tribunals, all of which are wholly distinct from national laws and national courts (see A/62/748 and Corr.1, para. 63, and A/62/294, para. 25). It has also been noted that as a result of a lack of experience or expertise required to assist staff with employment matters in the United Nations system, external lawyers may either misunderstand the relevant legal principles at issue or attempt to apply national or local legal principles that are not relevant to the United Nations context (see A/62/748 and Corr.1, para. 64). At the same time, as set out above, external counsel represent staff members before the internal Tribunals and are acquiring experience in the United Nations legal framework;

(f) Successful staff members before the internal Tribunals may argue that they have not been adequately compensated unless the Tribunal awards legal costs. Pursuant to the statutes of the Dispute and Appeals Tribunals where on of the Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.[f]

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[e] See the report of the Internal Justice Council (A/67/98, para. 51) in which the Council noted difficulties with reliance on external counsel.

[f] A number of international administrative tribunals have awarded legal costs to successful litigants, including the International Labour Organization Administrative Tribunal, the International Monetary Fund and the European Union Civil Service Tribunal. The former United Nations Administrative Tribunal also awarded legal costs in exceptional cases, where it has been demonstrated that the costs are unavoidable, are reasonable in amount and exceed the normal expenses of litigation before the Tribunal (see A/CN.5/R.2 of 18 December 1950). In most domestic legal systems, costs typically "follow the event" and are awarded by a court or tribunal to the successful party.

(b) Representation by external pro bono legal counsel

22. Pro bono legal work is undertaken by lawyers voluntarily and without payment, or at a reduced fee, as a public service or where a case involves issues of interest to the provider of the pro bono services. Pro bono legal services generally serve to provide access to justice by providing legal services to those who are unable to afford them.

23. Staff members who use pro bono legal counsel may not need to fund their own representation before the Tribunals, nor do they need to avail themselves of the services of the Office of Staff Legal Assistance.

24. The same advantages identified in paragraph 20 above for paid external counsel are applicable to pro bono legal counsel.

25. The following disadvantages have been identified for this option:

(a) Staff members might not meet financial eligibility and/or subject matter criteria for representation, if any, under a particular pro bono programme;

(b) Pro bono legal services may not be available where staff members serve, especially for staff members serving in the field.

3. Option of representation by former or current staff members

26. It has always been, and continues to be, an option for staff members to be represented by former or current staff members before the internal Tribunals of the Organization.

27. Depending on the arrangements made between the staff member and the former or current staff member, there may be no direct costs to either the staff member or the Organization associated with such representation.

28. The following advantages have been identified for this option:

(a) Legally trained staff volunteers with knowledge of the internal rules of the Organization and the system of administration of justice may take cases that the Office of Staff Legal Assistance would decline to take, including cases where the Office considers it has a conflict of interest;

(b) Current staff members who have other duties in the Organization would have no incentive to prolong proceedings.

29. The following disadvantages have been identified for this option:

(a) Staff volunteers may lack legal qualifications and might be unable to adequately represent the interests of staff members before the internal Tribunals. As was noted by the Redesign Panel, the reliance of the former Panel of Counsel on volunteers without legal training resulted in an inequality of legal resources in the internal justice system (A/61/205, para. 106);

(b) As noted by the Redesign Panel in its report (ibid., para. 104), staff volunteers were sometimes reluctant to serve on the Panel of Counsel out of concern that they could be pitted against a manager that has to review their employment contract;

(c) Staff volunteers must attend to their normal duties in addition to assisting staff members. There are no provisions that would enable staff volunteers to have time off for this purpose;

(d) The availability of staff volunteers is uncertain. There are no mechanisms that would provide incentives to staff members to volunteer to assist other staff members. Problems associated with the availability of staff volunteers could generate delays.

4. Option of self-representation by staff members

30. It has always been, and continues to be, an option for staff members to represent themselves in the United Nations system of administration of justice.

31. There are no direct costs to either staff members or the Organization associated with self-representation.

32. The following advantage has been identified for this option: staff members are free to advance whatever positions and arguments they consider most advantageous.

33. The following disadvantages have been identified for this option:

(a) Most staff members are not legally trained and thus may be unable to identify or cogently advance their positions and arguments. Furthermore, they may not be familiar with the applicable rules of procedure and evidence and with critical deadlines that might result in meritorious cases being dismissed, thereby placing an undue burden on the judges, registries and opposing counsel and causing delays in the proceedings;

(b) Reliance on self-representation of staff members before the internal Tribunals would result in an inequality of resources available to the parties before the Tribunal and thereby limit meaningful access to the formal system of administration of justice (see also the report of the Internal Justice Council (A/67/98, para. 50)).

C. Options proposed for a mandatory staff-funded scheme for the Office of Staff Legal Assistance

34. The present section builds on the concept paper on a staff-funded mechanism for the Office of Staff Legal Assistance included by the Secretary-General in his report on the administration of justice presented at the sixty-sixth session (A/66/275 and Corr.1, annex I). That concept paper set out three options for a mandatory staff-funded scheme for the Office: (a) a universal mandatory contribution model under which all staff members would be required to contribute a percentage of their salary based on automatic payroll deductions; (b) a mandatory "user-pay" model in which staff members who use the services of the Office would be charged for services rendered; or (c) a mandatory staff union/association funded model under which a percentage of dues collected by staff unions and associations would be used to fund the Office.

35. Given that at its sixty-sixth session the General Assembly decided that the role of the Office of Staff Legal Assistance would continue to be that of assisting staff members and their volunteer representatives in processing claims through the formal system of administration of justice, including representation, pending further

consideration of this issue by the Assembly at its sixty-seventh session, each of the options set forth below are based on the current mandate of the Office, including representation and resource requirements.

36. As part of the consultation requested by the General Assembly, the three options for a mandatory staff-funded scheme for the Office were presented at the Staff Management Committee meeting held in Arusha, United Republic of Tanzania, in June 2012. Staff representatives were uniformly opposed in principle to any mandatory option or proposal, but indicated that they were very supportive of the Office.

37. Staff representatives were of the view that since staff members give up recourse to their domestic legal systems when they join the United Nations, the Organization should provide and fund legal assistance, including representation, to staff members as part of the United Nations system of administration of justice. They also indicated that under any mandatory scheme, staff would seek to participate in the selection of judges and legal officers of the Office.

1. Universal mandatory contributions option

38. Under the universal mandatory contributions model, funding for the Office would be supported by way of a mandatory assessment levied against the salaries of all staff members in the form of regular payroll deductions.

39. Under this option, the General Assembly would continue funding the already approved resources for the budget of the Office.[g] Funds collected from staff members would be applied towards additional resources for the Office. A small percentage would also be set aside as a contingency to cover any unanticipated shortfalls, such as sudden staff reductions due to downsizing of missions.

40. For purposes of equity and ease of administration, it is recommended that the levy imposed on all staff members be based on a fixed percentage of salary that would be the same for all staff members.

41. The additional resources would consist of two P-4 legal officers, four General Service staff and $52,000 for additional non-post resources. The cost of these additional resources has been calculated to be approximately $895,000.

42. In order to fund these additional resources, the percentage payroll deduction required would be approximately 0.029 per cent, which would be applied against net base salary. The amount of the percentage deduction would be related to the amount of additional resources sought. Accordingly, a smaller or greater percentage deduction would yield fewer or greater resources.

43. Using these figures, the following are examples of the impact that a 0.029 per cent deduction from payroll would have on salaries of staff members at different levels and serving at various duty stations. The examples illustrate that the effect of such deduction on staff members would range from approximately $0.16 to $4.60 per month, as follows:

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[g] Member States would fund the current budget of the Office, including the staffing complement established pursuant to General Assembly resolution 63/253 (1 P-5, 5 P-3, 1 P-2 and 3 General Service posts), plus a P-3 general temporary assistance post funded through the support account for peacekeeping.

Duty station of staff member	*Level of staff member*	*Net base salary (United States dollars, per month)*	*Deduction for the Office of Staff Legal Assistance (United States dollars, per month)*
Geneva	P-5, step 5	16 055.95	4.60
New York	P-3, step 3	8 106.34	2.32
South Sudan	G-5, step 7	1 510.42	0.43
Nairobi	G-4, step 4	1 345.41	0.39
Somalia	G-2, step 4	552.50	0.16

44. The following advantages have been identified for this option:

(a) It would provide a consistent source of revenue to cover additional expenses of the Office;

(b) Given a large staff member population, even nominal individual contributions could result in a significant amount of funding;

(c) It would likely be relatively easy to administer and have minimal administrative costs.

45. The following disadvantages have been identified for this option:

(a) Currently, the percentage of staff filing complaints in the formal system of justice is less than 1 per cent of the total staff population. Under this system, approximately 99 per cent of staff members would be required to pay for a service that they would be unlikely to use. As a result, staff members who used the services of the Office would pay, by way of the payroll deduction, an amount that would be less than the actual cost of the services, since the cost of additional resources for the Office would be subsidized by the general population;

(b) Mandatory assessments might be challenged by staff members who would be required to pay for a mandate of the Organization that provides services that they do not make use of;

(c) This system might create an expectation on the part of staff, individually or through their representatives, that they would have a right to participate in the operational decisions of the Office, including policy decisions, decisions related to selection of staff for the Office and decisions made on individual cases. This could undermine the role of the Office as an independent actor in the system of administration of justice.

2. Mandatory user-pay option

46. Under the mandatory user-funded option, only those staff members who used the services of the Office would contribute towards funding the Office through a fee charged for services rendered. There are three basic variants on this model: (a) fees could consist of a one-time flat fee, under which staff members would pay a fixed amount for all legal services rendered;[h] (b) fees could be based on a fixed hourly

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[h] Under this variant, staff members whose complaints were resolved quickly would be charged the same amount as staff members whose matters went to trial. Accordingly, a one-time flat fee would financially adversely affect those staff members who settled early and financially benefit those staff members who proceeded to trial. Under the hourly rate and fixed schedule of fees variants, charges to staff members would depend on the types of services provided.

rate, under which staff members would pay for services rendered based on the number of hours involved;[i] or (c) fees could be based on a pre-determined schedule of fees, under which staff members would pay fixed amounts for specific types of legal services rendered.

47. The third variant would appear to be the most practicable and fair of the three user-pay variants. A pre-determined schedule of fees, fixing amounts for specific types of legal services rendered, could be calculated with the assistance of experts with experience in developing fee schedules for national legal systems. For example, there could be separate rates for:

(a) Initial consultation;

(b) Assistance during the management evaluation stage;

(c) Assistance during mediation;

(d) Representation before the Dispute Tribunal involving written submissions,

(e) Representation before the Dispute Tribunal involving oral hearings;

(f) Representation before the Appeals Tribunal involving written submissions;

(g) Representation before the Appeals Tribunal involving oral hearings.

48. In addition to a schedule of rates for different legal services rendered, it may also be advisable to develop a sliding scale for such rates, which would depend on whether the staff member is internationally or locally recruited, or is in the Professional or General Service and related categories. Such a sliding scale would serve to take into consideration the different salary scales of different categories of staff members and ensure that the fees charged were reasonable and within the means of the individual staff member concerned.

49. The user-pay option would also require the establishment of modalities for the billing and collection of fees. Requiring staff members to sign a statement authorizing a deduction of the fees from their salary before accepting the benefit of the services of the Office could ensure the timely payment of fees in a transparent and dependable manner.

50. The following advantages have been identified for this option:

(a) Fees would be paid directly and only by those staff members that actually availed themselves of the services of the Office, rather than requiring all staff members to fund a service they are likely never to use;

(b) The cost of legal services would not be subsidized by the general population of staff members. As a result, the cost for legal assistance would be increased, which could avoid the pursuit of unmeritorious litigation.

51. The following disadvantages have been identified for this option:

(a) It would be unlikely to produce a continuous and reliable revenue stream. The inherent unreliability of this system as a source of revenue would make it uncertain whether the Office would have access to the additional resources required to handle its workload;

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[i] This variant would entail legal officers keeping track of their time and billing staff members for the time spent at a fixed hourly rate.

(b) It would be more difficult to administer than the universal mandatory model and would incur greater administrative costs;

(c) Staff members who have meritorious cases might not bring their cases forward based on financial considerations, with the result that incorrect administrative decisions would not be addressed;

(d) Successful staff members before the internal Tribunals may assert that they have not been adequately compensated in the absence of any mechanism to recover their incurred legal fees or at least a portion thereof through an award of costs.

3. Mandatory payments from staff associations and unions option

52. The concept paper presented at the sixty-sixth session presented a third option for a mandatory scheme in which staff associations and unions would be required to contribute a portion of the staff dues remitted to them to support the Office. The paper advanced three possibilities for determining the fee to be paid, namely: (a) assess a fixed amount against a percentage of the dues received by each staff association and union; (b) base the fee on the number of staff that each staff union and association represents; or (c) assess a fixed amount for each staff union and association.

53. It should be noted that any attempt to impose a mandatory levy on staff associations and unions in any form might be challenged as wrongful interference in their internal affairs.

54. It should be recalled that the United Nations staff associations and unions cannot impose a mandatory dues levy on staff that they represent. Accordingly, any levy on staff associations and unions would work to advantage staff members who are not members, since they would, in effect, be in a position to benefit from the services of the Office without paying for them, either directly by mandatory deduction from payroll or a user fee, or indirectly through payment of union dues. Accordingly, this scheme would not result in an equitable distribution of costs and benefits across staff members.

55. This option also may not provide an adequate revenue stream for the additional resource requirements of the Office, as the amount and source of revenues of staff unions and associations vary significantly. Staff committees in field duty stations and in the regional commissions are relatively small and have comparatively small revenue streams from all sources. Accordingly, they could not afford to contribute more than a token amount to any type of staff-funded scheme. Since the staff unions in New York and Geneva have the highest levels of revenue, imposing a scheme based on a percentage of revenue generally would result in staff members who are members of unions in these duty stations subsidizing the contributions for staff members elsewhere in the Organization.

56. Assessing a contribution from staff unions and associations based on a fixed percentage of revenues from staff dues would pose difficulties given the differences in revenue sources. For example, the United Nations Staff Union in New York generates the majority of its revenues from staff dues, while the United Nations

Staff Coordinating Council of the United Nations Office at Geneva generates the majority of its revenue from the cooperative shop at the Palais des Nations. Only a very small percentage of its revenues are generated from staff dues. Thus, contributions based on a percentage of revenues from staff dues would favour the United Nations Staff Coordinating Council in Geneva and penalize the United Nations Staff Union in New York and others which have no alternate revenue streams.

57. The following advantage has been identified for this option: funding from staff unions and associations would reflect the benefits that union members gain from the services of the Office.

58. The following disadvantages have been identified for this option:

(a) An attempt to impose a mandatory levy on staff associations and unions in any form might be challenged as wrongful interference in their internal affairs;

(b) The financial resources of the United Nations staff associations and unions vary significantly;

(c) Staff members that do not pay union dues would not fund the Office in any way, and staff could avoid paying for the Office merely by renouncing their membership dues in staff unions and associations;

(d) Individual unions and associations, in particular those that are not well funded, may complain that the imposition of a levy would impede their ability to provide basic services to their members;

(e) If staff associations and unions were obligated to contribute to the Office, they might request the Office to advise them directly on matters pertaining to the administration of justice and assist them with drafting amicus curiae briefs;

(f) As with the other mandatory schemes, staff associations and unions might seek some form of control over or participation in the operational decisions and budget proposals of the Office.

D. Implications of a mandatory staff-funded scheme for consideration by the General Assembly

59. The Secretary-General recommends, pursuant to paragraph 28 of resolution 66/237, that the General Assembly take note of the various options for: (a) the representation of staff members before the internal Tribunals and (b) a mandatory staff-funded mechanism for the Office of Staff Legal Assistance and their respective advantages and disadvantages.

60. The Secretary-General further recommends that the General Assembly consider the question of whether a mandatory staff-funded scheme for the Office of Staff Legal Assistance is consistent with the Charter of the United Nations and, in particular, with Article 17, paragraph 2, thereof.

Annex III

Practice of tribunals in other international organizations and in Member States regarding the awarding of exemplary or punitive damages

A. The practice of States

1. Seven replies were received from Member States addressing practice in their respective jurisdictions. The reply of each is set out in summary form below.

1. Austria

2. The Permanent Mission of Austria advised that according to the Austrian Equal Treatment Act, companies and job placement agencies refrain from discrimination in formulating internal or external job advertisements. An initial offence against the principle of discrimination-free job advertisements will entail an administrative sanction by the district administrative authority, while further violations can lead to an administrative penalty of up to €360. Sanctions for discrimination in the context of an employment relationship (in establishing employment, setting pay, promotion, termination of employment or any other working conditions) may include the imposition of measures to eliminate the discrimination or material damages and compensation for "sustained personal impairment". In the case of sexual harassment or harassment on grounds of age, religion and belief or sexual orientation, the affected person is entitled to damages amounting to a minimum of €1,000 for "sustained personal impairment".

3. In the past there was no central federal register for such data, which could only be provided by each federal entity/authority for civil servants and contractual employees. An amendment to the 2011 Law on Civil Servants, however, imposes an obligation to report to the Federal Chancellery the imposition of such sanctions with effect from 1 January 2012, enabling future provision of this information.

2. Ecuador

4. The Permanent Mission of Ecuador provided statistical details on the numbers, status and outcomes of claims for moral damages, across a three-year period from 2010 to 2012. The data was disaggregated by legal form of claim as well as by province.

3. Japan

5. The Permanent Mission of Japan advised that the National Personnel Authority is a quasi-judicial entity with jurisdiction over appeals by national public employees against "disadvantageous actions". The Authority may cancel the actions being contested and/or order reinstatement of the employee concerned, if it deems necessary. However, in the context of proceedings of the Authority, the employee cannot claim a monetary award against the Government as compensation for moral damages or emotional distress incurred by the "disadvantageous actions" in question. In addition to the procedures through the Authority, national public employees can claim compensation for damages incurred through civil suits and actions for state redress.

4. New Zealand

6. The Permanent Mission of New Zealand advised that in its national context the same employment standards apply for all employers, whether governmental and public authorities or not. Under the applicable statutory scheme of the Employment Relations Act 2000, any employee can bring a personal grievance against their employer based on either unjustified dismissal or unjustified action. Before the Employment Relations Authority hears a matter, the parties are encouraged to attend mediation with the mediation services supplied by the Department of Labour. At mediation any number of outcomes may be agreed between the parties. Mediation is confidential, as are the outcomes.

7. The Employment Relations Authority makes a determination as to whether the actions of the employer give rise to a claim of personal grievance, examining both the procedural fairness and the substantive justification of the action taken by the employer against the employee. If the Authority finds a case well-founded, available remedies include reinstatement, compensation for lost wages and compensation for hurt and humiliation, with contributory conduct by the employee a factor that may be taken into account. The Employment Court has superior jurisdiction.

8. In terms of compensation for lost wages, the benchmark is three months. In respect of compensation awards for hurt and humiliation, the Permanent Mission provided a survey of a range of awards in this area covering the period July to December 2011. Of 93 awards in that time frame under this heading made by the Employment Relations Authority and 5 made by the Employment Court, 80 of the former and all 5 of the latter fell within the NZ$ 1-9,999 range. The Authority also made 9 awards in the NZ$ 10,000-14,999 range and 4 at NZ$ 15,000 and above.

9. The Permanent Mission also provided a good practice guide for the provision of severance payments in the public sector, issued by the Controller and Auditor-General. The guide clarifies that there are no set limits on the size of severance packages, but that the amount paid must be reasonable in the circumstances and able to be justified as a proper use of public money.

5. Philippines

10. The Permanent Mission of the Philippines observed that both moral and exemplary damages may be awarded under its law and national jurisprudence. Under article 2217 of its Civil Code, moral damages included physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, shock, social humiliation and similar injury. Rather than being punitive, such damages compensate or alleviate these forms of harm. Although incapable of pecuniary computation, moral damages may be recovered if they are satisfactorily established to be the proximate result of, and proportionate to, the wrongful act or omission of the defendant.

11. An award of moral damages requires the following conditions to be met: (a) there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (b) there must be a culpable act of omission factually established; and (c) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant. The award of damages is predicated on any of the cases stated in article 2219. Moral damages may be recovered when the defendant acted in bad faith, gross negligence, in wanton disregard of a

contractual obligation and, exceptionally, when a breach of contract itself also amounts to a tort resulting in physical injuries.

12. Article 2229 of the Civil Code provides that exemplary or corrective damages are imposed, by way of example or correction for the public good in addition to compensatory damages. Such damages respond to action that is in bad faith or otherwise wanton, fraudulent, oppressive or malevolent. The entitlement of the claimant to such damages must be established; such an award is not a matter of right. Quantum also varies according to the amount of compensatory damages that may be awarded to the claimant.

13. Under the constitutionally entrenched doctrine of sovereign immunity, the State may not be sued without consent. The doctrine extends to suits filed against a public official for acts performed in the discharge of official duties. Consent to suit can be provided through a special law or by necessary implication. A waiver of immunity is implied when the State itself commences litigation and claims affirmative relief from the defendant and exposes itself to a counterclaim. Similarly, the State divests itself of its immunity when the Government enters into a contract that is not related to sovereign acts.

14. The Supreme Court has awarded moral damages or exemplary damages in employment disputes against the Government as such. In a series of other cases, the Supreme Court has found illegal acts of civil servants in respect of public employees to implicate personal liability rather than implicating the liability of a Government entity.

15. The applicable threshold of proof necessary for moral and exemplary damages varies by cause of action. Employment disputes in the public sector are, however, usually instituted through administrative proceedings, in which case only "substantial evidence" is required. This standard is the relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

6. Spain

16. The Permanent Mission of Spain observed that article 106.2 of the Constitution of Spain sets out the general principle of the pecuniary responsibility of the State for the functioning of public services.

17. With regard to the pecuniary responsibility of the State in general, article 106.2 of the Constitution is also reflected in article 139 of Act No. 30/1992, which states that: private individuals shall have the right to be compensated by the relevant public authorities for any harm they suffer in respect of any of their property or rights, except in cases of force majeure, provided that such harm results from the proper or improper functioning of public services. In any event, the alleged harm must be real and quantifiable and must affect a specific individual or group of persons. In this connection, Spanish jurisprudence has established that the pecuniary responsibility of public authorities is not engaged unless (a) the private individual suffers a harm in respect of his property or rights that he or she is not obliged to endure, (b) the harm is real, tangible, quantifiable and attributable to the public authority, and (c) the harm results from the proper or improper functioning of public services. There must therefore be a cause-and-effect relationship between the functioning of the service and the harm, provided that the harm is not caused by force majeure.

18. Under Spanish jurisprudence, since pecuniary responsibility is objective and outcome-based, the relevant issue is less the illegality of the actions of the authority and more the illegality of the outcome or harm. Hence, there must be a causal nexus between the proper or improper functioning of the public service and the injurious or damaging outcome produced. This principle of the illegality of damage suffered is established in Spanish jurisprudence because illegality is a prerequisite or requirement for the attribution of damages and of the duty to compensate imposed on the public authority.

19. Article 121 of the Constitution specifically regulates the pecuniary responsibility of the State for the improper functioning of the justice system. This constitutional principle is expanded in Book III, Title V, articles 292 to 297, of the Judiciary Organization Act of 1985, which sets out the two circumstances — judicial error and improper functioning of the justice system — which give rise to the right to compensation by the State, except in cases of force majeure, and provided that the damage is real, quantifiable and affects a specific individual or group of persons. The mere revocation or annulment of judicial decisions does not automatically create a right to compensation; such a right will not arise when the error or improper functioning results from the misconduct or culpable conduct of the injured party.

20. With regard to moral damage or emotional distress that is caused by public authorities and gives rise to an entitlement to financial compensation in view of the impossibility of providing specific reparation, judicial practice has shown that damage subject to compensation includes moral damage, but that moral damage is difficult to evaluate, especially if it is combined with compensation for other types of material damage. In judicial practice, there is little dispute about the compensability in principle of this type of damage. The issue is rather whether it involves the traditional concept of moral damage or a more expansive one, and whether or not it covers rights relating to personality and so on.

21. In relation to the types and limitations of evidence required to create and establish the causes of such compensation, the specific procedure for determining compensation is set out in the regulations on the pecuniary responsibility of the State (articles 142 and 143 of Act No. 30/1992 and Royal Decree No. 429/1993, which regulates the procedures governing the responsibility of public authorities). The object of the procedure is to fix the quantum and method of compensation and to establish the time of occurrence of the harm; it also specifies the procedure for reporting to the State Council. The State Council rules on the existence or non-existence of a causal relationship between the functioning of the public service and the harm caused and, where applicable, on the value of the harm caused and the quantum and method of compensation, while the General Judicial Council reports on claims of pecuniary responsibility of the State for the wrongful functioning of the justice system.

22. The Permanent Mission provided lengthier detail on the specific context of compensation for judicial error, including for pretrial detention resulting in acquittal or dismissal, and for undue delay in proceedings. The tangible evidence to be adduced in order to fix the limits of compensation may vary from case to case. To determine, for example, whether there has been an undue procedural delay that causes harm, various criteria must be taken into account, including, for example, the complexity of the case, the caseload of the judicial body, any structural weaknesses

of the judicial apparatus, the conduct of the litigants during proceedings, the actions of the judicial bodies and the detrimental consequences of the delay for the litigants. Since mere failure to meet procedural deadlines does not of itself give rise to the right to compensation, it must be proved that harm resulted from the delay by the judicial bodies.

7. Switzerland

23. The Permanent Mission of Switzerland advised on approaches taken to compensation in circumstances of (a) null and void or invalidated terminations of the employment relationship; (b) gender discrimination; and (c) other violations of the law.

24. Where a termination was declared null and void, for instance as a result of major procedural irregularity, or invalidated as wrongful or abusive, employees receive compensation if, through no fault of their own, no substitute employment can be found for them. The compensation paid in these circumstances is equivalent to (a) the wages that would have been paid during the established period of protection from dismissal, if termination was summary; or (b) from three months' to two years' wages in other cases. The applicable criteria for establishing the amount of the compensation include, inter alia, the social and economic circumstances of the parties, the strength and duration of the employment relationship and the circumstances of the termination. In practice, compensation following termination where the employee could not be rehired has been awarded in very few cases.

25. In cases of gender-based discrimination, including sexual harassment and refusal to hire, the law provides for special compensation both punitive and remedial in nature. Where the discrimination involves sexual harassment, the employer may be ordered to pay compensation to the employee unless evidence is brought to show that the employer took the measures that could be reasonably expected, on the basis of experience and in light of the circumstances, to prevent such acts or bring an end to them. Compensation is awarded taking all the circumstances into account and is calculated on the basis of the average Swiss wage, up to a maximum of six months.

26. In cases of sexual harassment, tribunals rarely award the maximum of six months' wages provided for in the 1995 Federal Act on gender equality. In rare cases (for example, where rape is involved), compensation for sexual harassment, the purpose of which is both to punish the employer for not meeting the obligation of due diligence and to remedy the harm caused by that negligence, is supplemented by compensation for moral harm. The existing case law on the matter is, however, limited to the private sector.

27. Where discrimination involves a refusal to hire, the injured party may claim compensation from the employer. Compensation is awarded taking all the circumstances into account and is calculated on the basis of the wages to which the victim of discrimination would reasonably have been entitled, up to a maximum of the equivalent of three months' wages. Even where several persons claim compensation for refusal to hire for the same position, the total amount of the compensation paid shall not exceed this amount. In cases of wage discrimination, employees may claim payment of the wages in arrears that they should have received. In addition, the payment of damages and interest and remedy for moral harm may be claimed where warranted by the seriousness of the offence.

28. In terms of other violations of the law, in general Switzerland remedies harm caused unlawfully to a third party by an employee acting in an official capacity, regardless of whether the employee is at fault. It is now accepted that this rule also applies where harm was caused to an employee (not only to a third party) by another employee acting in an official capacity. For example, in the context of employment relations, even though there is no specific applicable rule, the Government, as the employer, pays compensation to its employees who are victims of violations of the law. In such cases, it is required to remedy the harm caused and, where applicable, to pay compensation equivalent to the objective value of the harm.

29. On the issue of damages for moral harm, where an employee of the Government is the victim of misconduct by another employee of the Government, the competent authority may, taking the specific circumstances into account, award equitable compensation to the victim of bodily injury (or, in the case of death, to the victim's family) as moral damages. Any person who is a victim of an employee's violation of the rights of the person is entitled to a sum of money as moral damages, provided that this is justified by the seriousness of the offence and that the perpetrator has not provided some other form of satisfaction. For example, compensation in the amount of CHF 20,000 was awarded in one case of psychological harassment.

30. The amount of the moral damages to be paid depends primarily on the seriousness of the resulting physical or psychological suffering of the victim and on the potential to reduce that suffering significantly through payment of a sum of money. By its nature, compensation for moral harm is intended to remedy harm that cannot easily be reduced to a mere sum of money and is difficult to calculate mathematically. Therefore, it cannot exceed a certain amount; the compensation awarded must be equitable. There have been few cases involving moral harm in which the Government has been implicated, although there is more extensive private-sector case law. Since the legal rules governing moral harm in the private and the public sectors are similar, civil case law can serve as a benchmark for establishing the amounts that could be awarded by administrative courts. In civil cases, Swiss tribunals have shown restraint in awarding such compensation, which, in principle, ranges from CHF 1,000 to CHF 5,000 and, in extreme cases, from CHF 15,000 to CHF 25,000.

31. In terms of the evidentiary basis for compensation, in employment disputes against the Government the administrative authority conducts its own investigation and, if warranted, procures the evidence in inquisitorial fashion. The parties are, however, required to cooperate in the investigation in some cases, including during proceedings that they themselves have brought. Where there is no evidence or it cannot be reasonably procured, each party must prove its allegations in support of its case. As to the standard of proof, as a rule, there must be no reasonable doubt in order for a fact to be admitted as evidence. In some cases, a lower standard and a lesser burden of proof are envisaged. For instance, in cases of psychological harassment, a consistent coexistence of inferences may suffice. In cases involving discrimination as defined in the 1995 Federal Act on gender equality, a person who believes that he or she is the victim of gender discrimination need only show the plausibility of such discrimination. The burden of proof is then reversed, and it is for the employer to prove conclusively that there was no difference in treatment or that there were objective grounds for that difference. The burden of proof is

lessened for all forms of discrimination prohibited by the Act, with the exception of hiring discrimination and sexual harassment.

B. Practice of comparable administrative tribunals of international organizations

32. Seven replies were received from comparable administrative tribunals of international organizations addressing practice in their respective jurisdictions.

1. Administrative Tribunal of the International Labour Organization

33. The Registry of the Administrative Tribunal of ILO provided an overview of the Tribunal's approach to moral damages, while noting that a comprehensive assessment would require more time given the volume of case law. As a matter of principle, the Tribunal's approach has been that under any contract of appointment, an international organization is bound to respect an official's dignity and reputation and to beware of putting him or her needlessly in a difficult personal position. If an international organization fails in that duty it may be ordered to pay compensation, even if there is no administrative decision to be set aside. Compensation will be awarded, however, only for serious wrong likely to prove damaging to a staff member's career.

34. The case law of the ILO Administrative Tribunal has made clear that an international organization is liable for material and moral damages resulting from the injury caused to a staff member by his superior by workplace treatment that is an affront to the staff member's personal and professional dignity, and for any victimization consequent upon improper treatment. The Tribunal accepts that frictions being an inevitable adjunct of life, restitution cannot be awarded for every sort of emotional distress. Only exceptional circumstances warrant compensation for emotional distress. The Tribunal has thus held that it is not likely to concern itself with cases other than those where grave injury has not been redressed and affects the staff member's career.

35. Normally, compensation is awarded when the impugned administrative decision is set aside as unlawful. Where the impugned decision is unlawful, the Tribunal considers that the wrong need not be especially grave for an award of compensation for moral prejudice: it is enough for the Tribunal to find a serious wrong. A complainant is entitled to compensation for moral prejudice provided that there was serious injury to his or her feelings, which in one case was quantified at $8,000. When a complaint is allowed and the contested decision set aside, a complainant may also be awarded moral damages for delays in the processing of the internal appeal. Awards in this respect have included €250 per applicant for an egregious delay of two years between the filing of the internal appeal and the filing of the organization's reply, and €1,000 in moral damages for the internal delay and lack of care.

36. There are also cases where the Tribunal will award compensation even if the impugned decision is not set aside. Awards in this respect have encompassed delay in the internal appeal procedure ($5,000, $2,000 and CHF 2,000). In a case where the organization failed to deal with the appeal in a timely and diligent manner, €1,000 was awarded under this heading, while where the organization was found negligent, €3,000 was awarded. In a further case, €8,000 was awarded for excessive

delay from the start of a post classification exercise through to final decision, while non-observance by the organization of its own rules led to an award of €500. In circumstances where an appeal procedure was an inordinately long two years, but did not concern a very difficult case and needed to be settled promptly in view of the nature of the decision to be taken and the complainant's age, the Tribunal found negligence warranting compensation of $3,000. If the complainant is however wholly or partly responsible for the delay, the delay claim may be rejected.

37. The Registry emphasizes that, as a general rule, a claim for compensation must be sufficiently substantiated and justified. If the complainant fails to prove damages claimed or to show that the decision or the sanction was aimed at, and had the effect of, harming his or her reputation and dignity, it will be rejected. A mere allegation does not suffice, but if proved, compensation for moral injury can be awarded by the Tribunal in an amount which has varied from $1,000, through to $10,000 or even $100,000. By way of example, the act of circulating to all an organization's staff, on the organization's own initiative, a message containing defamatory statements regarding a complainant constituted a particularly serious breach of that duty, resulting in an award of CHF 10,000.

38. In an early instance, the Tribunal decided that an award of moral damages was justified by reason alone of the manner in which otherwise valid decisions were executed. While finding that compensable moral prejudice in such cases was very exceptional and only justified in circumstances in which grave injury of a kind likely to impair a staff member's career had been left unredressed, the Tribunal found that the "calamitous" effect of events coming coupled with gross insensitivity on the part of the organization justified an award of CHF 30,000 for moral and professional prejudice resulting from grave injury done to the complainant's feelings and reputation.

39. The Tribunal's case law has held that damage to personal or professional reputation constituted harassment and as such entitled the complainant to moral damages. At the same time, the Tribunal has maintained a key distinction between improper personal prejudice against a staff member and a belief, whether mistaken or not, that a staff member's professional opinion is wrong. The former must be established by the staff member, while the latter does not suffice for an award of compensation.

40. The Registry observed that when a staff member makes charges as serious as sexual harassment the Tribunal requires an organization to do its utmost to afford protection, while simultaneously carrying out a full and proper inquiry that respects the rights of the accused. Failure to do so in one instance entitled a complainant to an award of $10,000. On another occasion, the Tribunal considered that the organization's failure to take steps to bring about a resolution of a harassment grievance facilitated the development of an adverse climate and prolonged the period in which statements that were hurtful to the complainant and potentially harmful to his reputation could circulate. It thus made an award of CHF 30,000 for moral injury. In another instance where, as a result of disclosure of accusations against the complainant to persons who were not entitled to be informed of them, and of the organization's failure to take adequate measures to protect the complainant's reputation, the Tribunal made an award of CHF 30,000 as compensation for moral injury although the complainant had not proved that his career or health had been affected by that stress.

41. In the disciplinary context, even absent any finding of bad faith or improper purpose on the organization's part, the Tribunal may make awards for moral damage. In a case where a complainant had suffered a lengthy disciplinary process which was clearly flawed because due process was denied and which the organization should have known was flawed and where the complainant's good name and reputation were inevitably seriously compromised by the proceedings and the finding that he had committed serious offences, it made an award of $30,000. In terms of exemplary or punitive damages, in certain circumstances, the Tribunal does award damages under these headings.

2. Administrative Tribunal of the World Bank

42. The Registry of the Administrative Tribunal of the World Bank noted that if the Tribunal finds an application well-founded, it will order the rescission of the decision contested or the specific performance of the obligation invoked unless the Tribunal finds that the Respondent has reasonably determined that such rescission or specific performance would not be practicable or in the institution's interest. In that event, the article provides that the Tribunal shall, instead, order such institution to pay restitution in the amount that is reasonably necessary to compensate the applicant for the actual damages suffered. The Registry notes that the 2001 amendment of article XII (1) of its statute introducing the "actual damages" level of compensation lifted the earlier ceiling on damages.

43. While the new statute text seems to imply a mutual exclusivity between rescission or specific performance and compensatory awards, in practice there has not been a strict division between these two types of remedy. The Tribunal has instead continued to proceed on the basis that rescission or specific performance may be incapable of remedying every injury resulting from a violation, so that both forms of relief may be provided to remedy different facets of a wrong.

44. In terms of the specificity of pleas, the Tribunal's rule 7 (3) requires the applicant to state the amount of compensation claimed by the applicant in the event that the Tribunal finds that the respondent institution has determined that rescission or specific performance would not be practicable or in the institution's interest; any other relief which the applicant may request in accordance with the Statute; and the amount of costs requested by the applicant. The Tribunal is not bound by its statute or rules to formulate or limit its award according to an applicant's stated requests.

45. The Tribunal has recognized that it has no mandate to make punitive awards, as these go beyond providing an applicant with adequate reparation of injury actually suffered. At the same time, the Tribunal has noted that its judgements may have an exemplary effect, in the sense that it seeks to ensure that the Bank takes remedial action in the interest of all staff members.

46. Turning to moral damages, in recent decades the Tribunal has in a number of cases awarded "equitably assessed" damages to applicants who have suffered an injury, such as distress, for which rescission or specific performance is not an appropriate remedy. The Tribunal has defined such damages as "reasonable compensation". While such awards sometimes resembled those made for "intangible" or "moral" injuries, in other cases this connection has been made explicit. The Tribunal has also awarded damages for moral injuries, but has not clearly differentiated between such injuries and intangible ones.

47. The Registry suggests that if there is indeed a distinction to be made, it could be argued that a moral injury is a type of intangible injury that occurs when there has been a wrongful deviation from standard managerial behaviour or treatment of staff, including when resulting from a due process or procedural wrong forming a separate, intangible injury. At an earlier point the Tribunal's own use of these terms suggests that the terms were essentially synonymous, but more recently it has tended to offer a distinction. In a leading case, the Tribunal awarded damages for an intangible injury resulting from a breach of the applicant's due process right to confidentiality during an investigation, as well as for separate moral injury caused by excessive security measures taken against the applicant despite a lack of evidence of violent or threatening behaviour on his part.

48. In another instance, the Tribunal noted the applicant's claim for moral damages but awarded compensation of an unspecified type for an unusual degree of monitoring and continuing stigma and embarrassment resulting from her retention on a performance-improvement plan in violation of relevant staff rules. More recently, the Tribunal has appeared to reject the term "moral" damages, as requested by applicants, in favour of "intangible" where the injuries were directly caused by faults in due process.

49. In other relevant cases, the Tribunal has awarded compensation for the applicant's stress, confusion and other intangible injury resulting from her Director's crossing of the line separating friendly congenial relationships from improper behaviour, while in another the Tribunal awarded damages for a moral injury caused by excessive security measures taken. On another occasion, the applicant claimed professional and moral damage, with the Tribunal in turn awarding compensation for both material and moral damage resulting from a termination decision in breach of Bank rules and policy.

50. In terms of damages for procedural irregularities and due process violations, the Tribunal has consistently used the term "intangible injury" to identify compensable wrongs in many (albeit not all) cases (a) in which the applicant's due process or procedural rights have been infringed, (b) where the Bank has failed to fulfil a promise, or (c) rescission of the contested decision or specific performance are unwarranted or inappropriate remedies. The approach can be classified into categories where there is a showing of harm from the violation in question and where there is no such showing.

51. In the first category where harm is shown arising from the violation, the Tribunal has awarded compensation of an unspecified type for the aggregate of irregularities and infringements of due process rights that inevitably resulted in upsetting the applicant's career in the Bank and which constituted an abuse of discretion that the Tribunal could not condone. The Registry suggests that this set of wrongs could collectively constitute an intangible injury arising from the misapplication of Bank procedures.

52. In another case, the Tribunal awarded compensation because the Bank's failure to provide a prompt and candid disclosure of reasons for the applicant's termination delayed him by four months in dealing in an informed manner with the Bank's action and thereby caused him an intangible injury. The Tribunal has also held that defective investigative and enforcement procedures may have impaired the applicant's abilities to present his case and may thus have caused at least intangible injury for which compensation may be appropriate. It has also maintained that an

applicant had suffered an intangible injury because appropriate standards of justice were not fully observed in an administrative review and that damages were appropriate for an intangible injury caused by a violation of the applicant's right to confidentiality resulting from the turning over of his medical records to an investigator in violation of the staff rules. Likewise, the Tribunal has awarded compensation for an intangible injury caused by the Bank's wrongful retention and use in litigation of the applicant's tax returns.

53. Even where the Tribunal has found it difficult to place a value on the intangible injury caused when the Bank's treatment of the applicant fell short of appropriate standards of justice, it has felt proper to award a year's net base salary since in the circumstances rescission of the decisions contested or specific performance of the obligation invoked was not a remedy appropriate to the injury done. Similarly, in another case the Tribunal awarded compensation for intangible damage arising from due process violations and the Bank's mismanagement of the applicant's case, as rescission of the termination decision and reinstatement were not realistic remedies.

54. In a redundancy case, while noting the applicant's claim of an intangible injury, the Tribunal awarded compensation of an unspecified type even though no particular decision of the respondent was to be quashed, because the respondent's behaviour towards the applicant, taken as a whole, constituted mismanagement of the applicant's career, revealed errors of judgement which taken together amounted to unreasonableness and arbitrariness, and fell short of the standards of treatment required of the Bank.

55. In a case where the Tribunal found that the applicant had suffered injury because of procedural irregularities, it awarded compensation under this heading in the amount of four months' net salary and costs. In another instance where the respondent failed to follow appropriate procedures in reassignment and redundancy processes, the Tribunal found that the applicant was entitled to two years' net base salary by way of compensation for the lack of due process and the abuse of discretion which resulted in injury to him, although the decisions were not set aside.

56. The Tribunal has held that not all procedural irregularities warrant a specific remedy. In other cases, the Tribunal has accepted that compensation may flow directly from the procedural breach. It has held, for instance, in circumstances where the Staff Rules had not been respected, that it was not necessary to show that the outcome for the applicant would have been any different had the rules been followed, as the objective of the Rules was to ensure that procedures were transparent and that those affected were dealt with according to a fair process. The Tribunal therefore ruled that the applicant was entitled to be compensated for the respondent's failure to observe the Staff Rules.

57. In another instance, the Tribunal reasoned that while the Bank's conduct had not been sufficiently compliant, it did not necessarily amount to a compensable irregularity. Even though it was satisfied that the applicant was most unlikely to have been promoted, even if a proper review had been conducted, it argued that yet, due process was an inherent requirement in the employment relationship, and therefore it might be appropriate to penalize procedural irregularities even if they did not ultimately lead to a different substantive outcome. The Tribunal thus considered that the respondent should be ordered to pay compensation for the denial

of the applicant's procedural rights even without showing that a grading exercise would have led to her promotion.

58. On the issue of the evidence required and burden of proof, in a number of cases, significantly, the Tribunal did not elaborate in any detail why it chose the particular figure for the compensation awarded. This may partly be because the injury compensated in these cases could be characterized as at least partly a moral injury. On the other hand, on other occasions the Tribunal clearly regarded the compensation awarded as covering only the material loss incurred by the applicant. In the practice of the Tribunal even material loss may not always be scientifically established and was not subject to meticulous proof in respect of the actual loss suffered. At the same time, the Tribunal has emphasized that an applicant must specifically allege and prove what loss he or she suffered and that the loss was directly attributable to the Bank's action or failure to act.

3. Administrative Tribunal of the International Monetary Fund

59. The Registry of the Administrative Tribunal of the International Monetary Fund (IMF) noted an approach in the Tribunal's case law whereby it may reject the merits of a challenge to a contested administrative decision, yet still award compensation for breaches of due process, procedural irregularities or intangible injury. Quantum in this regard could be assessed either in specific dollar amounts, or in relation to the staff member's salary. Among the four cases cited, awards in this respect ranged from six months' net salary for procedural irregularities and breach of due process, to $45,000 for a breach of due process, $75,000 for breach of fair process and procedural irregularity and $100,000 for intangible injury.

4. European Union Civil Service Tribunal

60. The Registry of the European Union Civil Service Tribunal noted, on the issue of reputational damage and emotional distress, that these forms of injury had been among the most important bases for compensation of moral damage. Surveying a variety of cases related to reputational damage arising from public leaks of confidential information, the Registry identified awards ranging from €90,000 in circumstances of significant aggravation of the damage to the applicant's reputation and professional integrity, to €15,000 in damage for the non-material harm suffered by the applicant consisting of prejudice to honour and reputation. In a related context, the Tribunal made an award of non-material damage of anxiety and uncertainty even though the staff member's professional integrity had already been compromised by the publication of a defamatory press article, on the basis that the administration had aggravated the harm by failure to act to restore the applicant's honour and dignity publicly.

61. In terms of due process violations, the Registry observed that this concept did not exist, as such, in the practice of the European Union Civil Service Tribunal, but that there were cases where various violations of procedure were considered causes of moral damage. In one instance, the Tribunal awarded 100,000 Belgian francs as compensation for non-material damage in the form of anxiety and uncertainty which an applicant suffered after finding that for nearly 10 years the Administration had maintained an adverse parallel personnel file, when he had had no opportunity to defend himself. In an instance of procedural irregularities that caused the annulment of the staff report, the Tribunal awarded €1,000 for procedural irregularities that

caused non-material damage. It considered that the non-material damage caused by an unlawful staff report was not adequately and sufficiently compensated by its annulment in a case where in breach of the substantive right to be heard, there was a systematic failure to arrange for dialogue with the person concerned.

62. On types of evidence and threshold of proof required, the Tribunal has never heard witnesses or experts. On occasion, the staff member could utilize the expertise of internal experts for purposes of clarifying the facts, but not to establish or prove moral damage.

5. Administrative Tribunal of the Asian Development Bank

63. The Executive Secretariat of the Administrative Tribunal of the Asian Development Bank noted that, apart from the rulings on damages as reflected in the Tribunal's published decisions, the Tribunal has no formal practice or policy relating to the awarding of compensation for moral injury or for due process violations. Each case that reaches the Tribunal on appeal is decided based on the issues raised, the facts proven and in accordance with the then prevailing and applicable policies, rules and regulations.

6. Administrative Tribunal of the European Bank for Reconstruction and Development

64. The Office of the General Counsel at the European Bank for Reconstruction and Development drew attention to section 8.05(a) of the Bank's appeal procedures. Under this provision, which concerns the award of compensation in lieu of remedial measures, the Tribunal, when awarding a remedial measure other than the payment of money, shall also fix an amount to be paid by the respondent as compensation should the respondent not implement the measure. The section goes on to provide that the amount fixed by the Tribunal shall not exceed three times the then current (or if the employment has been terminated, the final) annual salary of the appellant.

65. The Office of the General Counsel noted the Bank's position that the overall cap of three times the salary set out therein applies to all forms of compensation, including compensation for moral injury, while pointing out that the Tribunal has not yet had an opportunity to pronounce itself on the validity of this overall cap.

7. Administrative Tribunal of the Organization of American States

66. The secretariat of the Administrative Tribunal of the Organization of American States provided details of the Tribunal's statute and a chart of 35 relevant cases. The statute provides for a number of specific caps on awards. In cases where the Tribunal orders reinstatement of the staff member in service, article IX (2) of the statute requires that the Tribunal fix an indemnity of two years' basic salary in lieu of reinstatement, with a maximum of an additional year's basic salary possible in exceptional circumstances and where specific reasons are provided. In instances where a case is remanded to the Secretary-General for an error of procedure, the Tribunal may order payment of up to three months' basic salary for such injury as may have been caused by the delay (article IX (4)). Lastly, article IX (5) empowers the Tribunal to award the prevailing party attorneys' fees and costs of up to one month's remuneration at the P-4 level (for cases involving up to 10 complainants, or double that, if more) where the losing party has brought a clearly frivolous claim or

objection, did not have solid grounds for litigating, has been totally defeated, or has been proven to have acted with actual malice.

67. The case law spanning 1976 to 2004 comprised 27 cases of due process issues, 6 concerning moral injury and 2 a combination of both. In terms of practice with respect to due process, the Tribunal has not considered minor irregularities to amount to due process violations. In contrast, the Tribunal has found due process violations in circumstances of, for example, (a) unlawful termination of contract; (b) abuse of process when competitions are cancelled and all that remains to complete the competition process is the administrative act of appointment by the Secretary-General; (c) arbitrary action beyond the discretionary power of the administration; (d) violations of administrative due process rights such as rights of defence and fair hearing; (e) inaccessibility to staff members of internal procedures; (f) serious procedural irregularities, including lack of strict compliance with formal regulations or failure to exhaust internal administrative procedures; and (g) substantial delays in taking decisions or applying established procedures.

68. In terms of moral injury, the secretariat noted awards in connection with violations of due and fair process, as well as on wider human rights grounds, such as discrimination during a competition process. In one instance, damage was proved by a psychiatrist's certificate. The Tribunal has also declined awards in circumstances of (a) lack of evidence in the applicant's favour; (b) where the Administration generally acted lawfully in good faith; (c) where a settlement was reached; or (d) where allegedly adverse facts were appropriately in the public domain.

Annex IV

Expedited arbitration procedures for consultants and individual contractors

A. Introduction

1. In paragraph 38 (a) of resolution 66/237, the General Assembly requested the Secretary-General to submit to the Assembly at the main part of its sixty-seventh session a proposal for implementing a mechanism for expedited arbitration procedures for consultants and individual contractors,[a] including the cost implications for various aspects of the proposal. Such a mechanism was described in annex II to the report of the Secretary-General on the administration of justice submitted to the Assembly at its sixty-sixth session (A/66/275 and Corr.1).[b] The present report is submitted in response to that request.

2. The present report is divided into two sections. The first section contains the proposal of the Secretary-General for implementing a mechanism for expedited arbitration procedures for consultants and individual contractors. The second section contains the cost implications for various aspects of the proposal.

B. Proposal for implementation

1. Preparation of the expedited rules

3. As set out in annex II, paragraph 6, of document A/66/275 and Corr.1, cases under the expedited arbitration procedures would be conducted in accordance with a new set of expedited arbitration procedures (hereinafter the "expedited rules"). The expedited rules would be based on the provisions of the UNCITRAL arbitration rules, modified as necessary to incorporate the expedited procedures. The Office of Legal Affairs would prepare a text of the expedited rules in consultation with the funds, programmes and entities participating in the use of the expedited rules (each, a participating fund or programme).

2. Implementation of the expedited rules

4. The expedited rules would be implemented in the manner hereafter described for all contracts between the United Nations or a participating fund or programme (a United Nations entity) and its consultants and individual contractors.

5. For such contracts, the Office of Legal Affairs would prepare, in consultation with the participating funds and programmes, a model dispute settlement provision setting out a two-stage process for resolving disputes under such contracts. The first

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[a] As noted in document A/66/275 and Corr.1, annex II, paragraph 1, the expedited procedures would apply only to individuals engaged pursuant to contracts for the services of a consultant or individual contractor and, consequently, would not apply to any other category of non-staff personnel.

[b] The present paper was prepared by the Office of Legal Affairs, General Legal Division, in consultation with the United Nations funds and programmes. It should be noted that the United Nations Children's Fund, the United Nations Development Programme, the United Nations Office for Project Services and the United Nations Population Fund have reserved the right to "opt out" of the proposed expedited arbitration procedures.

stage would involve only the United Nations entity and the consultant or individual contractor engaged by it. At that stage, the parties would attempt to resolve the dispute amicably between them, as at present. If the parties were not able to resolve the dispute amicably, either party would be able to commence arbitration proceedings in accordance with the expedited rules (the second stage).

6. The model dispute settlement provision would serve to ensure conformity with the expedited rules and uniformity in the wording of dispute settlement provisions in the contract forms used by various participating funds and programmes. The dispute settlement provision would incorporate the expedited rules by reference and would stipulate that the arbitration will be governed by them. Each participating fund or programme would be responsible for taking the necessary steps to bring the dispute settlement provisions in its contracts into conformity with the model provision.

7. The contract document would stipulate that the consultant or individual contractor has been informed of, and has agreed to, the application of the expedited rules as an integral part of the contract in the event of dispute with a United Nations entity. The expedited rules, as well as any additional information about the arbitration process, would be made available online.

3. The neutral entity

8. As proposed in annex II, paragraphs 5 and 23 to 26 of document A/66/275 and Corr.1, and described below, a core element of the expedited arbitration procedures would be the neutral entity. The core functions of the neutral entity would be: (a) to vet arbitrators proposed for inclusion in the list of arbitrators; (b) to promulgate and maintain the list of arbitrators; (c) to appoint the arbitrators for arbitration cases under the expedited rules; (d) to consider and resolve challenges to arbitrators by parties to arbitration cases; and (e) to hold, manage and, as appropriate, disburse the deposits towards the arbitrator's fee and expenses to be paid by parties to an arbitration case. While the functions of the neutral entity would not include the full array of services typically provided by arbitral institutions, additional administrative functions for the neutral entity may also be considered.

9. It is proposed that there be a single neutral entity, which the Secretariat would select and engage in accordance with the procurement regulations, rules and policies of the United Nations.

10. The annual fee and general expenses (i.e., those not associated with a particular case) of the neutral entity would be shared among the United Nations and the participating funds and programmes. However, should the neutral entity charge additional expenses specifically for a particular arbitration case (such as expenses incurred in connection with dealing with a challenge to an arbitrator or in connection with the parties' deposits), such additional expenses would be borne and shared equally by the parties to the case. One half of such additional expenses will be paid individually by the United Nations entity involved in that particular arbitration.

4. Arbitrators

(a) List of arbitrators

11. The neutral entity would promulgate and maintain a list of arbitrators, as explained below.

12. The Office of Legal Affairs would consult with the participating funds and programmes and the neutral entity regarding an initial list of arbitrators. Following such consultations, the Office of Legal Affairs would propose to the neutral entity, for inclusion in the initial list, the names of arbitrators agreed among the Office of Legal Affairs and the participating funds and programmes, and would provide to the neutral entity the curricula vitae of those arbitrators. The neutral entity would vet each of the arbitrators thus proposed, and would exclude from the initial list any arbitrator who does not meet the specified qualifications to serve as an arbitrator under the expedited rules (see paras. 13 and 14 below). The neutral entity would then promulgate an initial list of arbitrators containing those proposed arbitrators whom it has approved. After promulgation of the initial list, arbitrators would be added to or excluded from the list in the same manner.

13. To qualify for inclusion on the list of arbitrators, an arbitrator would be required to have knowledge of commercial law and experience in international arbitration cases, including cases under the UNCITRAL Arbitration Rules; be familiar with the United Nations or other international organizations and the issues and functions particular to such an organization; be competent in at least English, French or Spanish; and be of good character. To the extent possible, there should be geographical diversity among the individuals on the list of arbitrators.

14. As a condition for being included in the list of arbitrators, an arbitrator would be required to sign a document that he or she agrees, if appointed as arbitrator in a case, to conduct the arbitration in accordance with the expedited rules, and agrees to the fixed arbitrator's fee and conditions for payment set forth in the expedited rules (see paras. 17-21 below).

(b) *Selection and appointment of arbitrator for a case*

15. In each case, there would be a single arbitrator, who would be appointed by the neutral entity in the manner hereinafter described.

16. If, in a request for arbitration, the claimant were to propose an arbitrator from the list of arbitrators and the respondent were to agree with the proposed arbitrator, the neutral entity would appoint that arbitrator. If the parties did not agree on an arbitrator, the neutral entity would employ a ranking system, as follows: the neutral entity would propose to the parties three arbitrators from the list of arbitrators; each party would rank the arbitrators in order of preference; and the arbitrator ranked highest by both parties would be appointed by the neutral entity.

(c) *Fee and costs*

17. The parties to the case would share the arbitrator's fee and costs equally.

18. The expedited rules would establish a fixed fee for the arbitrator's work on the case, and set out rules and conditions as to the arbitrator's entitlement to payment of the fixed fee (see para. 21 below). In addition, the arbitrator would be reimbursed for expenses reasonably incurred by him or her in connection with the case. It is proposed that the amount of the fixed fee depend on the amount in dispute in a case, as further detailed in paragraph 34 below.

19. It is further proposed that the arbitrator's fee be paid as follows: when the claimant files a request for arbitration and statement of claim with the neutral entity, he or she would be required simultaneously to pay to the neutral entity, as a deposit

towards the arbitrator's fee and costs, 25 per cent of the amount of the arbitrator's fixed fee for the case (representing one half of the claimant's 50 per cent share of the arbitrator's fee). Under the expedited rules, the arbitration proceedings would be initiated only after (a) the filing of the request for arbitration and statement of claim, and (b) the payment of the claimant's initial deposit (25 per cent) of the arbitrator's fixed fee.

20. When the respondent files its response to the request for arbitration, it would be required simultaneously to pay to the neutral entity 25 per cent of the amount of the arbitrator's fee (representing one half of the respondent's 50 per cent share of the arbitrator's fee). The neutral entity would be required to retain these deposits in a dedicated escrow account, separate from any other funds held by it, to be disbursed at the time the arbitrator becomes entitled to payment (see para. 21 below).

21. The arbitrator would be entitled to compensation in accordance with the following conditions:

(a) If a case were settled or otherwise terminated before the respondent had filed its response to the claimant's request for arbitration, the arbitrator would receive no compensation;

(b) If a case were settled or otherwise terminated after the respondent had filed its response to the claimant's request for arbitration, but prior to the closure of the proceedings and commencement of the time period for issuing the award (the "award period"; see A/66/275 and Corr.1, annex II, para. 36), the arbitrator would be entitled only to the deposits paid by the parties to the neutral entity and reimbursement for his or her reasonable expenses;

(c) If the case was not settled or otherwise terminated prior to the closure of the proceedings and commencement of the award period, the arbitrator would notify the parties of the closure of the proceedings and in that notice would require each party to pay to the neutral entity the balance of that party's half share of the arbitrator's fixed fee, i.e., an additional 25 per cent of the amount of the fixed fee. After the commencement of the award period, the arbitrator would be entitled to the full fixed fee, whether or not the case were settled or otherwise terminated before the award is issued. If the case were settled or terminated during the award period, the arbitrator would be entitled to withhold his or her order containing the settlement (if any) or terminating the proceedings until the parties had made these payments. If the case was not settled or terminated, the arbitrator would be entitled to withhold issuance of the award until the parties had made their payments.

5. Handling of arbitration cases

(a) General

22. As at present, the Office of Legal Affairs would represent the United Nations entity in the arbitration case.

23. In the event that a request for arbitration is filed by a consultant or individual contractor engaged by a participating fund or programme, the participating fund or programme would designate an officer to work with the Office of Legal Affairs in handling the matter.

(b) *Procedures*

24. The Office of Legal Affairs would prepare standard templates for the pleadings in the arbitration proceedings. These templates would be prepared in English, French and Spanish versions. The templates would be annexed to the expedited rules.

25. A consultant or individual contractor would initiate an arbitration case by submitting his or her request for arbitration and statement of claim to the respondent United Nations entity and the corresponding initial deposit of the arbitrator's fixed fee to the neutral entity, as specified in paragraph 19 above. This would be specified in the text of the expedited rules. The template for the request for arbitration and statement of claim would contain specific instructions as to how the claimant would submit this pleading and make the necessary deposits, including the relevant fax number or e-mail address.

(c) *Language of proceedings*

26. The expedited rules would provide that the language of the arbitration will be English, French or Spanish, as decided by the arbitrator after consulting with the parties in the event that the parties have not agreed on the language of the proceedings. A party wishing to submit a document or testimony in a language other than the language of the arbitration would be obligated to provide a translation or interpretation into the language of the arbitration at its own cost. The document or testimony would have to be submitted in its original and translated versions within the time limit established in accordance with the expedited rules, unless the arbitrator decided, in exceptional circumstances, to grant the party a short additional period of time to obtain the translation.

27. The foregoing proposal to limit the language of arbitration to English, French or Spanish is based upon the following considerations. Given the expedited nature of the proceedings and in order to keep costs down, the need for translation or interpretation should be minimized. It may be assumed that most, if not all, of the consultants and individual contractors whose services are retained work in English, French or Spanish. Thus, the documents that are likely to be relevant in an arbitration case, such as documents issued by a United Nations entity and that are submitted to it by its consultant or individual contractor, and communications between the United Nations entity and its consultant or individual contractor, are likely to be in one of these three languages. For those few documents that are not in one of these languages, the expedited rules would provide that they must be translated at the submitter's cost.

C. Cost implications

28. This section discusses the various elements of the proposal for implementation in section B that are likely to have cost implications. These costs are divided into external and internal costs. External costs include costs for the neutral entity and the arbitrators. Internal costs include one-time start-up and operational costs associated with the implementation of the streamlined arbitration proposal. It should be noted that, as discussed more fully under each category below, indicated costs are, of necessity, only estimates.

1. External costs

(a) *Costs for the neutral entity*

29. The costs for the neutral entity would include its annual fee and, if charged separately, its expenses. As stated in paragraph 10 above, the annual fee and general expenses of the neutral entity would be shared among the United Nations and the participating funds and programmes. Case specific expenses for the neutral entity will be paid individually by the United Nations entity involved in the arbitration.

30. It is not possible to provide in the present report an accurate estimate of the fee of the neutral entity for the following reasons. The amount of the neutral entity's annual fee would be established as a result of the procurement process to be engaged in for selecting the neutral entity (see para. 9 above). Thus, the annual fee can be known only once that process has been completed. Moreover, the fees charged by arbitral institutions for their services do not provide an adequate analogy upon which to base an estimate of the fees of the neutral entity. Indeed, the particular package of functions to be performed by the neutral entity, enumerated in paragraph 8, above, is *sui generis*. While arbitral institutions typically provide their services to parties to a dispute on a case-by-case basis, and structure their fees on that basis, the neutral entity would have certain standing functions that are not associated with a particular case, e.g., vetting, promulgating and maintaining the list of arbitrators and holding, managing and disbursing the parties' deposits (see para. 8 above), and would be continually available to perform its other functions in particular cases as they arise.

31. For the purposes of estimating at least a portion of the neutral entity's costs, it should be noted that even if the neutral entity would be performing only the function of an appointing authority, a role which some arbitral institutions already play, the average cost per year would be approximately $482,400. This figure is based on the average appointing fee charged by various arbitral institutions ($1,608), as listed in the table below, and on the assumption that the promulgation of the expedited rules could result in 300 cases per year (see para. 44 below).

Arbitration institution[a]	*Appointing fee (per case, United States dollars)*[b]
Permanent Court of Arbitration	1 986.75
International Centre for Dispute Resolution	2 000.00
International Chamber of Commerce	3 000.00
London Court of International Arbitration	1 626.00
Arbitration Institute of the Stockholm Chamber of Commerce	1 986.75
Dubai International Arbitration Centre	137.35
Singapore International Arbitration Centre	1 614.20
Hong Kong International Arbitration Centre	515.20

[a] The international arbitral institutions contemplated in the table are those that (a) currently offer their services as appointing authority, and (b) have publicly available information on the fees charged for acting as appointing authority.

[b] All fees are expressed in United States dollars for comparison purposes. For those institutions where a different currency is used, the fee expressed in United States dollars results from the application of the United Nations official exchange rate to the fee currently charged by the relevant institution.

32. However, it should be stressed that the above fees of institutions acting as an appointing authority can be only a starting point for considering the possible cost of the neutral entity, for reasons discussed in paragraphs 29 and 30 above. As detailed above, it is envisioned that the neutral entity will perform additional functions (besides acting as appointing authority) as well as have standing functions that are not associated with a particular case. Moreover, the fees in the table are amounts charged by an arbitral institution for acting as appointing authority in one case. Such a figure is likely to vary under the expedited rules where the neutral entity could consider up to 300 cases a year. Finally, the above estimated total of $482,400 is a preliminary figure subject to the outcome of the procurement process to be conducted for the selection of the neutral entity (see para. 9 above).

(b) Costs for arbitrators

33. The costs for the arbitrator in a case under the expedited rules would consist of the arbitrator's compensation and his or her reasonable expenses in connection with the case. As discussed in paragraphs 17 to 21 above, the amount of an arbitrator's compensation for a case would be fixed in amount, either as a fixed fee (where the case proceeds beyond the closure of the proceedings and commencement of the award period), or a percentage of the fixed fee (where the case is settled or otherwise terminated before that point but after the respondent has submitted its response to the claimant's request for arbitration).

34. It is proposed that the amount of the fixed fee should depend on the amount in dispute in a case as shown in the table below.[c]

Amount in dispute (United States dollars)	*Fixed fee (United States dollars)*	*Comments*
Up to 10,000	3,500	The proposed fixed fee takes into consideration (a) the average of arbitrator's fees established by reputable international arbitral institutions for a claim of $10,000, as well as (b) the suitability of the figure to compensate a sole arbitrator dealing with a dispute of up to $10,000 and an expected fair degree of complexity, while not imposing an undue burden on potential claimants.
10,001-50,000	5,000	The proposed fixed fee takes into consideration (a) the average of arbitrator's fees established by reputable international arbitral institutions for a claim of $50,000, as well as (b) the suitability of the figure to compensate a sole arbitrator dealing with a dispute of $10,001 to $50,000 and an expected fair to moderate degree of complexity, while not imposing an undue burden on potential claimants.

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[c] The consultant or individual contractor would be required to request a monetary remedy in his or her request for arbitration and statement of claim.

Amount in dispute (United States dollars)	*Fixed fee (United States dollars)*	*Comments*
50,001-100,000	7,000	The proposed fixed fee takes into consideration (i) the average of arbitrator's fees established by reputable international arbitral institutions for a claim of $100,000, as well as (ii) the suitability of the figure to compensate a sole arbitrator dealing with a dispute of $50,001 to $100,000 and an expected moderate to high degree of complexity, while not imposing an undue burden on potential claimants.
Above 100,000	15,000	The proposed fixed fee takes into consideration (a) the arbitrator's fees established by reputable international arbitral institutions for claims above $100,000, as well as (b) the suitability of the figure to compensate a sole arbitrator dealing with a dispute of more than $100,000 and an expected high degree of complexity, while not imposing an undue burden on potential claimants.

35. Based on the above suggested fixed fees and the assumption that the promulgation of the expedited rules may result in 300 cases per year (see para. 44 below), it is possible, at this stage, to estimate only a range of the total costs to be borne by the Organization. As shown in the table below, the total costs to be borne by the Organization for the arbitrator's fees would be estimated to be between $948,750 and $1,143,750.

	Claim	*Response*	*Proceedings*	*Award*
Amount in dispute up to $10 000[a]				**$3 500**
Claimant	$875.00		$875.00	
Respondent		$875.00	$875.00	
Amount in dispute $10 001-$50 000				**$5 000**
Claimant	$1 250.00		$1 250.00	
Respondent		$1 250.00	$1 250.00	
Amount in dispute $50 001-$100 000				**$7 000**
Claimant	$1 750.00		$1 750.00	
Respondent		$1 750.00	$1 750.00	
Amount in dispute above $100 000				**$15 000**
Claimant	$3 750.00		$3 750.00	
Respondent		$3 750.00	$3 750.00	

[a] All amounts are expressed in United States dollars for comparison purposes.

	Assumptions			
	Less than $10 000	*$10 000-$50 000*	*$50 000-$100 000*	*More than $100 000*
Total number of consultants and contractors	80 000			
Dispute cases (less than 0.5 per cent)	300			
Number of cases	15	135	135	15
United Nations cost	$26 250	$337 500	$472 500	$112 500
Number of cases	75	75	75	75
United Nations cost	$131 250	$187 500	$262 500	$562 500
Total United Nations cost for arbitration[a]	**From $948 750 to $1 143 750**			

[a] Excludes amounts to be paid by the Organization under the award rendered.

36. Although not a cost of implementing the expedited procedures per se, financial consequences would accrue from arbitration cases under the expedited procedures that result in settlements or compensation awards against the Organization in favour of claimants.

2. Internal costs

(a) Start-up costs

37. The Office of Legal Affairs and the participating funds and programmes will incur costs with regard to the time spent by their respective staffs in dealing with various administrative matters in connection with the implementation of the expedited rules. These are expected to be mainly one-time start-up costs that will be incurred in relation to the following: (a) the preparation and carrying out of the competitive procedures for selecting and engaging the neutral entity; (b) the establishment of the list of arbitrators, including consultation by the Office of Legal Affairs with the neutral entity and the participating funds and programmes, and the preparation and submission to the neutral entity of a proposed initial list of arbitrators (see para. 12 above); (c) the preparation and finalization of the expedited rules (see para. 3 above); and (d) the preparation by the Office of Legal Affairs, in consultation with the participating funds and programmes, of the model dispute settlement provision and the templates for the pleadings under the expedited rules.

38. The above-mentioned functions cannot be dealt with through re-prioritization nor paid for from existing resources in a demand driven office like the Office of Legal Affairs and would therefore require the allocation of general temporary assistance. It is estimated that a legal officer at the P-4 level would be required for nine months to deal with these matters in connection with the implementation of the expedited rules. The approximate cost for a P-4 legal officer for nine months would be $204,000.

(b) Operational costs

39. These costs include the costs for staff of the Office of Legal Affairs representing a United Nations entity in cases under the expedited rules and the costs for staff of participating funds and programmes involved in such cases.

40. The cost for staff of the Office of Legal Affairs was estimated on the basis of the average time spent by staff of the Office of Legal Affairs in handling previous arbitration cases involving consultants or individual contractors and other moderately simple claims. Accordingly, it was estimated that the average time per case spent by staff of the Office of Legal Affairs is approximately 24 working days for one P-4 level staff member. Notably, this estimate is based on experience in handling previous arbitration cases involving mostly factual and legal issues of moderate simplicity. For cases that are of greater complexity, or that for other reasons require greater amounts of staff time, the costs would be higher.

41. An increase in the amount of additional arbitration cases would require a corresponding increase in resources for the Office of Legal Affairs. Even in the event that the promulgation of the expedited rules would result in 11 cases per year, one additional P-4 legal officer would have to be engaged to handle such cases (based on the average time per case spent by one P-4 legal officer as set forth under para. 40 above). The costs of one P-4 legal officer are currently $271,900. On the basis of the estimate that up to 300 new cases may be filed per year (see para. 44 below), significant additional resources would be required by the Office.

42. Additional costs will be incurred by the participating funds and programmes.

3. Estimated caseload under the expedited rules

43. The overall cost to the Organization for adopting the expedited rules would depend on the number of cases arising under them. There is no adequate analogy from which this number could be estimated with reasonable accuracy. Although the simplified nature of the expedited rules would represent a net cost saving on a per case basis, it is reasonable to expect a significant increase of litigation to the extent that the simplification of such procedures would render them less onerous for the consultants and individual contractors, thus facilitating access to arbitration.[d]

44. The total number of consultants and individual contractors working within the Secretariat and within the funds and programmes can be approximately estimated to be in excess of 80,000. Even if less than 0.5 per cent of these consultants and individual contractors were to bring an arbitration case, this could amount to a number of 300 arbitration cases per year. Based on the above estimates for the costs of the neutral entity and arbitrator's fees alone, the total estimated annual cost of the expedited arbitration procedures would be between $1,431,150 and $1,626,150. The general temporary assistance in the amount of $204,000 (start-up costs), as set forth in paragraph 38 above, as well as internal operational costs for the Office of Legal Affairs and the participating funds and programmes, would need to be added to this total.

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[d] In certain national jurisdictions, a number of consultants and individual contractors are actively pursuing cases against the Organization in national courts (see A/62/748 and Corr.1, para. 16).

D. Implications of establishing expedited arbitration procedures for consultants and individual contractors

45. The information in the present report responds to the request of the General Assembly in resolution 66/237 and contains the proposal of the Secretary-General for implementing the expedited arbitration procedures for consultants and individual contractors, including the cost implications for such procedures.

46. The Secretary-General recommends that the General Assembly:

(a) Take note that the introduction of expedited arbitration procedures to resolve disputes with consultants and individual contractors would require significant additional resources for the Organization as set out in the present report;

(b) Recall that the Organization currently offers a mechanism for the resolution of disputes with consultants and individual contractors through arbitration under the UNCITRAL Arbitration Rules (for more information on the current dispute settlement mechanisms available to contractors and individual consultants, see document A/62/748, paras. 12-18);

(c) Remain seized of the matter.

Annex V

Analysis of the policy and financial implications in the event that individual contractors and consultants covered by the proposed expedited arbitration procedures were to be permitted access to mediation under the informal system

1. In paragraph 38 (b) of resolution 66/237, the General Assembly requested the Secretary-General to submit to the Assembly at the main part of its sixty-seventh session an analysis of the policy and financial implications in the event that individual contractors and consultants covered by the proposed expedited arbitration procedure were to be permitted access to mediation under the informal system.[a] The present information is submitted in response to that request and provides an assessment of the financial implications regarding the contractors and consultants administered by the Secretariat.

2. As noted in the report of the Secretary-General to the General Assembly on the activities of the Office of the United Nations Ombudsman and Mediation Services, the Office considers it important to provide access to informal resolution to all United Nations personnel, regardless of category (A/66/224, para. 2).

3. Since the establishment of the ombudsman function in the Secretariat, the Office has been continuously contacted by individual contractors and consultants who are seeking to resolve their grievances informally. On an exceptional basis and when feasible within existing resources, limited services have been provided in cases where an informal resolution could be easily reached. It should be noted that many of these individuals are embedded in the Secretariat workplace and their grievances often affect United Nations staff, as well as the productivity of the Secretariat. However, with the steady increase in the utilization of the ombudsman and mediation services since the launch of the new administration of justice system, this category of employees has had to be referred to other mechanisms.

4. To assess the possible additional workload and subsequent financial implications if individual contractors and consultants were permitted to access the informal system, the Office of the United Nations Ombudsman and Mediation Services has reviewed its current utilization rate as an indicator of potential usage of services by non-staff. In 2011, approximately 3.2 per cent (1,588 cases) of the eligible staff population in the Secretariat made use of the informal system. Based on experience, not all cases referred to the Ombudsman proceed to mediation but can be handled through other informal resolution methods. The number of individual contractors and consultants engaged by the Secretariat between 1 January 2008 and 31 December 2009 was 35,231 of which 10,080 were engaged in non-field operations (see A/65/350/Add.1). As the workload of the Office has been increasing over the past years, this cannot be absorbed within the existing resources the Office has at the Professional level.

5. In order to effectively provide informal conflict resolution services to individual contractors and consultants, additional staffing resources are necessary

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[a] It should be noted that UNICEF and UNDP have reserved the right to "opt out" in the event that individual contractors and consultants covered by the proposed expedited arbitration procedures were permitted access to mediation under the informal system.

for the purpose of the intake and analysis of cases, the identification of appropriate resolution mechanisms and systemic issues, interaction with stakeholders to identify options for resolution, referral and mediation and other case-related administrative tasks. This would include resources for the coverage of the administrative workload to assist officers handling cases.

6. Resources would also be needed for training and travel to provide in-person services to non-staff located in offices away from Headquarters and field operations.

7. Two different scenarios are proposed for consideration by the General Assembly for the initial phase of permitting access for consultants and contractors to the informal system. The scenarios are based on current workload experience and the utilization rate of the current population served. The proposal also takes into consideration that the Assembly had established the positions of Regional Ombudsman/Senior Conflict Resolution Officer at the P-5 level to provide services to a dedicated constituency.

Scenario 1 (based on the intake of 300 cases during the initial phase)

Headquarters

One Senior Conflict Resolution Officer (P-5) to provide the full spectrum of informal conflict resolution services to non-staff and to liaise with the Mediation Service on cases that require mediation. The Senior Conflict Resolution Officer would manage the overall programme for providing informal conflict resolution services to non-staff (development, implementation and evaluation of activities), liaison with stakeholders, outreach activities, preparation of written outputs and supervisory functions. The Senior Conflict Resolution Officer would be required to provide in-person services to staff in the field by conducting three outreach missions per year to the main regions for 10 days each. Additional resources are required for specialized alternative dispute resolution training.

One Case Officer (P-3) to support the Senior Conflict Resolution Officer in the resolution of cases including researching of case-related information, identifying options for resolution, following-up with visitors, collecting feedback and analysing statistical information for reporting purposes. The Case Officer will also handle cases as assigned.

One Administrative Assistant (G-5) to support the Senior Conflict Resolution Officer and the Case Officer in the performance of their functions.

Field-based

One Conflict Resolution Officer (P-4) based in Nairobi would provide dedicated services to non-staff in the field. The Conflict Resolution Officer would be co-located with the existing Regional Branch in Nairobi and be supported through the existing infrastructure. The Conflict Resolution Officer would travel four times per year (five days each) to provide field-based services to large field operations and other staff in the region. Additional resources are required for participation in the Office's biannual retreat (five days in New York) and for specialized training in alternative dispute resolution, including travel.

Scenario 2 (based on the intake of 450 or more cases during the initial phase)

This scenario includes the resources as listed under scenario 1 and one additional Conflict Resolution Officer as described below.

One Conflict Resolution Officer (P-4) based in Geneva to provide services to non-staff in the region. The Conflict Resolution Officer would travel four times per year (five days each) to provide field-based services in Europe, Eastern Europe, the Middle East and other regions as necessary. Additional resources are required for participation in the Office's biannual retreat in New York (five days) and for specialized training. Administrative support would be provided through one of the regional branches.

8. For both scenarios, the necessary outreach efforts to educate individual contractors and consultants about the availability of this service would be absorbed through existing resources during the initial phase. Associated work for management, administration and other support to the new posts would be provided through existing resources at Headquarters.

9. During the initial phase and set-up of the new service, the Office would engage in a thorough assessment of actual resources needed and provide a more detailed analysis to the General Assembly once actual experience is available as to the actual resources needed.

10. Should the General Assembly decide to permit individual contractors and consultants access to the informal system, the financial implications would be the following:

(a) Travel resources in the amount of $57,900 to allow annual visits from the Senior Conflict Resolution Officer to each of the three main regions away from Headquarters (Asia, Europe and Africa). Additional resources to allow the new staff located outside New York to join the biannual retreat of the Office;

(b) Training resources in the amount of $24,000 to cover the fees for specialized training in alternative dispute resolution training and associated travel costs;

(c) Post resources in the amount of $489,600 net ($543,700 gross) to cover the costs associated with the five new positions (one P-5, two P-4, one P-3 and one General Service (Other level));

(d) All new posts reflected in the present report are proposed to be established as from 1 January 2013, in the event the access to the informal system is permitted to individual contractors and consultants. Given that the Advisory Committee on Administrative and Budgetary Questions, in paragraph 20 of its first report on the proposed programme budget for the biennium 2008-2009 (A/62/7), recommended that information on the delayed impact of posts should be reflected in all new proposals, the Assembly may wish to note that the additional requirements for the full costing of the proposed five new posts in the biennium 2014-2015 are currently estimated at $2,105,800 (gross): under section 1, Overall policymaking, direction and coordination, $1,900,000, and under section 37, Staff assessment, $205,800, to be offset by an equivalent amount under income section 1, Income from staff assessment;

(e) Should the General-Assembly decide to extend ombudsman and mediation services to individual contractors and consultants, in the terms contained in the present report, it may wish:

(i) To approve the establishment of five new positions (one P-5, two P-4, one P-3 and one General Service (Other level)) for the initial phase;

(ii) To appropriate a total amount of $691,300 net ($742,900 gross) for the programme budget for the period 2012-2013, under section 1, Overall policymaking, direction and coordination ($459,600), section 29D, Office of Central Support Services ($149,100); section 29E, Administration, Geneva ($39,300); section 29G, Administration, Nairobi ($43,300); and section 37, Staff assessment ($51,600), to be offset by a corresponding amount under income section 1, Income from staff assessment.

11. In response to the request of the General Assembly to submit an analysis of the financial implications in the event that individual contractors and consultants were to be permitted access to mediation under the informal system, the Secretary-General recommends that the Assembly consider the financial implications presented in this report and decide on this matter. In the event that the Assembly decides to grant access for these categories of staff to the informal system, there would be financial implications as indicated above.

Annex VI

Access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes

A. Introduction

1. The categories of non-staff personnel that are not covered under the dispute resolution mechanism proposed in annex II of the report of the Secretary-General on the administration of justice of 8 August 2011 (A/66/275 and Corr.1) or the proposed expedited arbitration procedures set forth in section annex IV of the present report include:

(a) United Nations Volunteers;

(b) Officials other than Secretariat officials;

(c) Experts on mission not retained by means of a consultant contract;

(d) Daily paid workers;

(e) Interns;

(f) Type II gratis personnel;

(g) Volunteers (other than United Nations Volunteers);

(h) Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm.

2. For each category, the following subsections provide (a) a description of the category and (b) a discussion of (i) the extent to which each category has access to the system of justice, if any, and (ii) any other measures available to them for addressing disputes.

B. Categories of non-staff

1. United Nations Volunteers

(a) Description of category

3. United Nations volunteers work with United Nations entities and governmental and non-governmental organizations on a short-term, voluntary basis and are not staff members. United Nations volunteers are recruited under the United Nations Volunteer programme, which is represented worldwide through the United Nations Development Programme (UNDP). United Nations volunteers are engaged pursuant to the conditions of service for international United Nations volunteers.

4. In 2011, approximately 7,500 United Nations volunteers were placed on assignment.

(b) Access to the system of justice and other measures to address disputes

5. United Nations volunteers may appeal an administrative decision to the Executive Coordinator of the United Nations Volunteers programme and, subsequently, to the Administrator of UNDP. Thereafter, they may bring the dispute to arbitration under the UNCITRAL Arbitration Rules. The proposed expedited arbitration procedures would not be made available to United Nations volunteers.

6. United Nations volunteers may seek informal mediation and resolution of matters through the Office of the United Nations Ombudsman and Mediation Services. However, they do not have access to the formal system of justice.

7. United Nations volunteers may file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

2. Officials other than Secretariat officials

(a) Description of category

8. Officials other than Secretariat officials are persons who perform specific functions for the Organization on a substantially full-time basis. Officials other than Secretariat officials are appointed by the legislative organs rather than by the Secretary-General. They have the status of officials of the Organization under articles V and VII of the Convention on the Privileges and Immunities of the United Nations. The following persons are recognized as "officials":

- The Chair of the Advisory Committee on Administrative and Budgetary Questions
- The Chair and the Vice-Chair of the International Civil Service Commission
- Inspectors of the Joint Inspection Unit (11 members)
- Judges of the United Nations Dispute Tribunal (8 judges)

(b) Access to the system of justice and other measures to address disputes

9. The terms and conditions of service of these officials, including recourse mechanisms or procedures, if any, are established by the appointing bodies. Because these officials are appointed by the legislative organs, the Secretary-General is not privy to the terms of engagement governing their service, including provisions concerning dispute settlement.

10. Officials other than Secretariat officials do not have access to the formal system of justice, nor to the Office of the United Nations Ombudsman and Mediation Services. They can address disputes that may arise through direct negotiations with the Organization. They also may file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

3. Experts on mission not retained under consultant contracts

(a) Description of category

11. Individuals performing functions for the Organization who are neither officials nor staff members may be accorded the status of experts on mission under

section 22 of the Convention on the Privileges and Immunities of the United Nations. While experts on mission may be issued a contract setting out the conditions of service with a dispute resolution provision included, many experts on mission do not serve pursuant to such contracts. Experts on mission serving without a contract include the following:[a]

- Members of the International Law Commission (34 members)
- Members of the Advisory Committee on Administrative and Budgetary Questions (other than the Chair) (15 members)
- Members of the International Civil Service Commission (other than the Chair and Vice-Chair) (13 members)
- Special rapporteurs, independent experts and special representatives appointed under mandates of the Commission on Human Rights which were subsequently assumed by the Human Rights Council (34 members)
- Judges of the United Nations Appeals Tribunal (7 judges)

12. The total number of experts on mission not serving under a contract as a consultant or individual contractor is approximately 17,000.

(b) *Access to the system of justice and other measures to address disputes*

13. The terms and conditions of service of experts on mission, including any recourse mechanism or procedure, are established by the appointing body.

14. Experts on mission do not have access to the formal system of justice, or to the Office of the United Nations Ombudsman. They can address disputes that may arise through direct negotiations with the Organization. They may also file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

4. Daily paid workers

(a) *Description of category*

15. Daily paid workers are used in some peacekeeping operations for unskilled work needed on an occasional basis. The United Nations Office for Project Services currently uses approximately 1,400 daily paid workers for missions in South Sudan, Haiti, Sri Lanka, Pakistan and Afghanistan. The Department of Field Support uses some 37 daily paid workers in peacekeeping missions in Guinea-Bissau, Sierra Leone and the Syrian Arab Republic.

(b) *Access to the system of justice and other measures to address disputes*

16. Daily paid workers do not have access to the formal system of justice, nor to the Office of the United Nations Ombudsman. They can address disputes that may arise through direct negotiations with the Organization. They may also file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

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[a] Military observers and civilian police personnel in peacekeeping missions are also experts on mission; however, they are governed by their own sets of directives and policies.

5. Interns

(a) Description of category

17. Interns work at the Organization through the United Nations Internship Programme. To qualify for the programme, individuals must either be enrolled in a graduate degree programme or have completed four years of university studies. The programme allows interns to enhance their educational experience and to gain exposure to the work of the Organization.

18. During the biennium 2010-2011, 4,364 interns were working for the Organization.

(b) Access to the system of justice and other measures to address disputes

19. Interns may request management evaluation of contested administrative decisions; however, they do not have access to the Dispute Tribunal or the Appeals Tribunal. The Management Evaluation Unit received one request for review from an intern in 2011 and three in 2010. Interns do not have access to the services of the Office of the United Nations Ombudsman.

20. Interns can address disputes that may arise through direct negotiations with the Organization. They also may file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

6. Type II gratis personnel

(a) Description of category

21. Type II gratis personnel (gratis personnel) are provided to the Organization by a Government or other entity responsible for the remuneration of the services of such personnel and do not serve under any other established regime. The total number of type II gratis personnel employed during the biennium 2010-2011 was 90.

(b) Access to the system of justice and other measures to address disputes

22. These personnel may request management evaluation of contested administrative decisions; however, they do not have access to the Dispute Tribunal or the Appeals Tribunal. To date, the Management Evaluation Unit has not received any requests for review from this category of staff. Gratis personnel do not have access to the services of the Office of the United Nations Ombudsman.

23. Type II gratis personnel can address disputes that may arise through direct negotiations with the Organization. They also may file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

7. Volunteers (other than United Nations volunteers)

(a) Description of category

24. Volunteers (other than United Nations volunteers) include personnel who provide assistance to the Organization without compensation in a capacity other than as interns, gratis personnel or any of the other categories of non-staff

personnel. Among the type of assistance that volunteers have provided is offering information on tours, housing, travel and cultural activities in New York.

(b) Access to the system of justice and other measures to address disputes

25. Volunteers may request management evaluation of contested administrative decisions; however, they do not have access to the Dispute Tribunal or the Appeals Tribunal. To date, the Management Evaluation Unit has not received any requests for management evaluation from volunteers. They do not have access to the services of the Office of the United Nations Ombudsman.

26. Volunteers can address disputes that may arise through direct negotiations with the Organization. They also may file complaints of discrimination, harassment and abuse of authority against staff members pursuant to the policies and procedures of the Organization.

8. Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm

(a) Description of category

27. Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm include individuals who are employed by suppliers and contractors that have been engaged by the Organization to provide goods or services in connection with the fulfilment of its objectives (i.e., employees of suppliers and contractors).

(b) Access to the system of justice and other measures to address disputes

28. Employees of suppliers and contractors are subject to the terms of employment and employment policies of their employer as well as the laws and regulations of their employers' country of incorporation, the country in which it performs its work, or both. Recourse from any adverse administrative or disciplinary action arising from their employment related to United Nations activities is through the internal procedures of their employer and the legal system of the appropriate country.

29. Employees of suppliers and contractors do not have access to the formal system of justice, or to the Office of the United Nations Ombudsman. They may file complaints of discrimination, harassment and abuse of authority.

Annex VII

Proposals for and analysis of mechanisms for addressing possible misconduct of judges

A. Introduction

1. Each of the General Assembly, the Secretary-General and the Internal Justice Council has put forward proposals for addressing complaints of judicial misconduct. These proposals are set out below together with additional views and analysis.

B. Proposal of the Secretary-General

2. In his reports contained in documents A/63/314 and A/66/275 and Corr.1, the Secretary-General proposed that allegations regarding the misconduct or incapacity of a judge of either the Dispute Tribunal or the Appeals Tribunal should be reported to the President of the relevant Tribunal. Upon receipt of such a complaint, after preliminary review, the President would establish a panel of experts to investigate the allegations and report its conclusions and recommendations to the Tribunal. All judges of the Tribunal, with the exception of the judge under investigation, would review the report of the panel. Should there be a unanimous opinion that the complaint of misconduct or incapacity was well-founded and where the matter was of sufficient severity to suggest that the removal of the judge would be warranted, they would so advise the President of the Tribunal, who would report the matter to the General Assembly and request the removal of the judge. In cases where the complaint of misconduct or incapacity was determined to be well-founded but was not sufficient to warrant the judge's removal, the President would be authorized to take corrective action, as appropriate. Such corrective action could include issuing a reprimand or a warning. The President would submit a report to the General Assembly on the disposition of complaints. The types of misconduct that would warrant the sanctioning of a judge would be violations of the code of conduct for the judges or violations of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, as set out in Secretary-General's bulletin ST/SGB/2002/9.

3. The proposal of the Secretary-General is in line with the practice of a number of international organizations. The African Development Bank, the Asian Development Bank, the International Monetary Fund and the former United Nations Administrative Tribunal, all stipulate in their statutes that a determination to remove a judge requires the agreement of all the other judges of the tribunal. Similarly, a concurrence of a majority of the judges is required to remove a judge under the statutes of the International Criminal Court and the European Union Civil Service Tribunal.[a] In addition, the proposal that the court reviewing a complaint against a judge may issue corrective action, such as a reprimand or warning, is recognized in the judicial systems of a number of Member States. For instance, in the Netherlands

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[a] The Statutes of a number of international tribunals, such as the Administrative Tribunal of the International Labour Organization, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the World Bank Administrative Tribunal, do not include a procedure for the removal or dismissal of a judge.

and the United Kingdom of Great Britain and Northern Ireland, the review of a complaint against a judge is conducted by judges at the court level who may issue a warning or reprimand to the judge concerned. At the same time, the actual removal or dismissal of a judge is conducted by a higher judicial authority, such as the Supreme Court in the Netherlands or the Lord Chancellor or Lord Chief Justice in the United Kingdom.

4. The proposal has several advantages from an operational perspective. Review of complaints by Dispute Tribunal and Appeals Tribunal judges would benefit from the experience of these judges in the United Nations system and their familiarity with the Organization's rules and procedures. No training or other delay-inducing and costly transitional measures would be required for the judges, who are already in service. Moreover, as the reviews would be undertaken by judges, the principle of judicial independence would be safeguarded. As the judges are already serving on the Tribunals, the proposal of the Secretary-General could be implemented almost immediately so that outstanding complaints would be dealt with expeditiously. Such a proposal would also be consistent with the views of the judges that they should be part of the machinery.[b]

5. The proposal of the Secretary-General contemplates that the President of the relevant tribunal would establish a panel of experts to investigate a complaint. Such panel would have to be provided with logistical and administrative support. Additional resources would have to be provided to the Office of Administration of Justice to be able to provide such support.

C. Proposal of the Internal Justice Council

6. In its report contained in document A/65/304, the Internal Justice Council suggested that, as it is the body that recommends judges to the General Assembly for appointment, it would seem to be an appropriate body to investigate complaints against judges. This proposal was further presented by the Council in its reports contained in documents A/66/158 and A/67/98 wherein it suggested that the three external members of the Council (the Chair and the two distinguished external jurists nominated by staff and management, respectively), form a complaints panel to consider complaints against judges. The complaints panel would hear evidence from both the complainant and the judge and determine whether further investigation and adjudication was warranted. The panel would be empowered to dismiss complaints after investigation or, if it considered the complaint to be well founded, to issue advice or guidance privately to the judge concerned or a public reprimand, where appropriate. If the panel considered that dismissal of the judge might be warranted, it would prepare a report with a recommendation to that effect for the General Assembly. In his report to the Assembly contained in document A/66/275 and Corr.1, the Secretary-General reported on the Internal Justice Council proposal to amend the terms of reference of the Council to provide the Council with the responsibility to investigate and make recommendations regarding any complaint against a judge of the Tribunals.

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[b] Report of the Internal Justice Council (A/67/98, para. 13); notably the Internal Justice Council takes a different position.

7. In the view of the Council, this proposal has several advantages. As stated in its report (A/66/158), the three external members of the Council are independent experts familiar with the United Nations system of administration of justice and the judges, they are not only familiar with the system of justice but, as the members of the body that identifies suitable candidates for appointment as judges, are also familiar with the judges and their knowledge and expertise would mean that complaints would be dealt with speedily and without requiring external consultants to be appointed. Judicial independence would be safeguarded as only the General Assembly, which appoints the judges, could dismiss the judge.

8. It should be noted when considering the option of tasking the external members of the Internal Justice Council with examining judicial complaints that, while they must be distinguished jurists, they may not necessarily be judges. For example, the most recent external membership of the Council included a judge, but that may not always be the case. Although there is an emerging international consensus that, in order to promote judicial accountability, complaints mechanisms should have a broad-based membership that may include legal practitioners and lay persons, in order to protect judicial independence, judges should represent a large part, if not the majority of the membership. Ideally, therefore, a United Nations complaints mechanism would include one or more judges.

9. For the same reasons advanced in paragraph 5 above, additional resources would be required to provide logistical and administrative support to the complaints panel.

D. Proposal of the General Assembly

10. Paragraph 44 of resolution 66/237 contains a proposal for a new mechanism for addressing judicial misconduct, consisting of one jurist from the highest judicial tribunal drawn from one Member State from each of the five geographical regions, appointed or elected by the General Assembly to serve when and as needed.

11. This proposal contemplates that members would be judges, which would be an advantage; however, the judges may not be familiar with the Organization and its system of justice. Candidates would have to be identified for appointment or election by the General Assembly. Logistical and administrative support would be required, which would have resource implications. Additional funds would have to be allocated to the Office of Administration of Justice to be able to provide such support.

E. National complaints mechanisms

12. In general, while complaints mechanisms vary from country to country and, in some countries such as the United States of America, from state to state, investigations of complaints against judges always involve judges. Some countries leave review of complaints to the court of the judge under investigation. As stated above, in the Netherlands judges are subject to a written warning given by the president of the court in which the judge serves or, if warranted, suspension which may be followed by dismissal by the Supreme Court. In the United Kingdom, the Lord Chancellor and Lord Chief Justice have joint responsibility for taking decisions on judicial discipline.

13. Many Member States favour review by a judicial council or committee. While these bodies vary in composition, all include judges in their membership. Some, such as the Canadian Judicial Council and the Zambian Judicial Complaints Authority, are composed entirely of judges or former judges. Others include members that are not judges: for example, the Danish Special Court has five members, including a judge from each of the three levels of courts, an academic jurist and a practising attorney; and the Judicial Commission of New South Wales, Australia, has 10 members, six of whom are judges, one of whom is a legal practitioner and the other three persons are of high standing in the community. Yet others, such as the National Council of Nigeria, the Council of Magistrates of Argentina and a number of judicial review commissions in the United States, such as the New Hampshire Committee on Judicial Conduct, include lay members.

14. It is important to note that all of these mechanisms limit the role of the judges or judicial commission to investigating the complaint and, in most cases, allow them to take some measure of corrective action if warranted. But the actual removal or dismissal of a judge requires the authority of the highest court or level of Government, upon the recommendation of the judges or judicial commission.

F. Conclusion

15. As indicated in the foregoing paragraphs, the creation of a panel of experts to investigate complaints against judges and recommend corrective action, if warranted, is common to all three proposals. In addition, they all ensure that the judge against whom the allegations were made would be afforded all requisite due process, such as the opportunity to know and respond to the allegations and submit relevant evidence, and leave removal or dismissal of the judge under investigation in the hands of the General Assembly. All could be consistent with the emerging international trend to establish judicial complaints authorities with mixed membership, while entrusting the removal or dismissal of a judge to a higher authority.

16. Comparing the proposals, the proposal of the General Assembly would appear to be the most complex and expensive. The proposals of the Secretary-General and the Internal Justice Council would appear to be more cost-effective. However, as set out above, since the external members of the Internal Justice Council might not necessarily be judges, there is no guarantee that the membership of the proposed complaints panel would include a judge. What distinguishes the proposal of the Secretary-General from the other two is that it is not only consistent with the practice of judges reviewing the conduct of judges, but could also follow the emerging international trend to refer complaints to bodies of mixed membership as the President of the relevant tribunal would be in a position to take this into account when establishing a panel of experts to investigate a complaint.

Annex VIII

Recommendations and analysis regarding proposal of the Internal Justice Council on a code of conduct for legal representation

A. Introduction

1. As detailed in the following paragraphs, the Secretary-General is of the view that a code of conduct is needed for external individuals who are not staff members and who act as legal representatives in the administration of justice system. The conduct of staff members who act as legal representatives of the Secretary-General or of staff is governed by a legal regime comprising the Charter, the Staff Regulations and Rules and related administrative issuances, and such regime may be supplemented, as needed, by the promulgation of additional administrative issuances.[a]

B. Regime applicable to the legal representatives of the Secretary-General

2. The legal representatives of the Secretary-General are staff members, and, therefore, their activities in representing the Secretary-General before the Tribunals, like all of their activities in the performance of their duties as staff members, are governed by the Charter, the Staff Regulations and Rules and related administrative issuances. The obligations established in those rules serve as the basis for regulating the conduct of all staff members who engage in legal work, whether in matters involving the administration of justice system or other fields of law. They include duties routinely found in codes of conduct for counsel, such as requirements for staff members to be truthful, to respect the confidentiality of information known by reason of their position, to uphold a high standard of competence and to avoid actions that adversely reflect on their status (staff regulations 1.2 (b), 1.2 (f) and 1.2 (i)). In addition, they expressly prohibit interference with the administration of justice system (staff rule 1.2 (f)). They also provide for the enforcement of their provisions, including the imposition of sanctions for violations, and mandate that the responsibility for such enforcement rests with the Secretary-General as the chief administrative officer of the Organization (staff regulations 1.1 (c) and 10.1).

3. The statutes of the Tribunals, moreover, establish a connection between the Tribunals and the existing legal regime for the regulation of the activities of the legal representatives of the Secretary-General. The statutes provide that the Tribunals may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability (Dispute Tribunal statute, article 10.8; Appeals Tribunal statute, article 9.5).

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[a] As noted below in paragraph 14, the Secretary-General can amend or supplement this legal regime through administrative issuances, as necessary, in order to ensure that the obligations of staff members representing the Secretary-General or staff before the Tribunals are substantially similar to the obligations in a code of conduct for non-staff members acting as legal representatives.

C. Gaps in regime applicable to the legal representatives of staff

4. According to the rules of procedure of the Tribunals, staff may present their own cases, or they may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practise law in a national jurisdiction (Dispute Tribunal rules of procedure, article 12.1; Appeals Tribunal rules of procedure, article 13.1). Staff may also be represented by another staff member or former staff member (Dispute Tribunal rules of procedure, article 12.2; Appeals Tribunal rules of procedure, article 13.2). Thus, staff may be represented by either staff members or external individuals who are not staff.

5. The activities of the legal representatives of staff who are staff members are governed by the same standards and enforcement provisions that apply to the legal representatives of the Secretary-General. Those standards and enforcement provisions, however, do not apply to the activities of the legal representatives of staff who are external individuals (i.e. not staff members), whether counsel authorized to practise law in a national jurisdiction or former staff members.

6. In resolution 62/228 (para. 16), the General Assembly requested the Secretary-General to establish a code of conduct regulating the activity of internal and external individuals providing legal assistance to staff to ensure their independence and impartiality. In response to that request, the Office of Staff Legal Assistance published "Guiding principles of conduct for Office of Staff Legal Assistance affiliated counsel in the United Nations".[b] These principles apply only to counsel affiliated with the Office, a subset of the legal representatives of staff composed of legal officers and volunteers of the Office. These principles are not applicable to the legal representatives of staff (e.g. staff members, outside counsel and former staff members) who are not affiliated with the Office.

D. Proposal of the Internal Justice Council

7. The Internal Justice Council has proposed that a code of conduct for legal representatives who appear before the Tribunals should be prepared under its auspices and presented to the General Assembly. The Council also proposes that the Assembly should authorize a panel of the Council's members to enforce the code of conduct. Under the proposal of the Council, the code of conduct would apply to the legal representatives of the Secretary-General and of staff (A/65/304, para. 41, and A/66/158, para. 26). The Secretary-General notes that the proposal of the Council for a single code regulating the conduct of all legal representatives is also espoused by the Dispute Tribunal in Nairobi, the Office of Staff Legal Assistance, the Staff Council of the Economic Commission for Latin America and the Caribbean and the United Nations Staff Union in New York.

8. The proposal of the Council for a code of conduct, to the extent that it would apply to legal representatives who are external individuals, would be an appropriate

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[b] The principles published by the Office, dated March 2010, are available at http://www.un.org/en/oaj/legalassist/pdf/osla_consel_code_of_conduct.pdf. These principles require counsel affiliated with the Office, inter alia, to observe a high standard of diligence in all matters concerning clients, to preserve the confidences of clients and the confidentiality of proceedings, to not knowingly misrepresent facts or law, and to observe a high standard of propriety and integrity in all matters connected with their functions.

addition to the existing framework of provisions applicable to the conduct of legal representatives. A code of conduct for legal representatives who are external individuals could serve to ensure that such individuals are informed of their obligations to the administration of justice system and to the staff that they represent. It could also serve to put non-staff legal representatives in a similar position of responsibility as staff members acting as legal representatives.

9. Since a regulatory framework already governs the conduct of legal representatives who are staff members, a new code of conduct would establish a duplicative set of obligations parallel to those established in the Charter, the Staff Regulations and Rules and related administrative issuances, as it would presumably include duties routinely found in codes of conduct for counsel such as requirements of truthfulness, confidentiality, competence, avoidance of impropriety and respect for judicial proceedings. Moreover, such a code would establish parallel and potentially contradictory enforcement regimes. The Secretary-General is of the view that it would be inappropriate for staff members to be subject to two parallel and potentially contradictory enforcement regimes, one to be enforced by the Secretary-General and the other by a panel of the members of the Council. These parallel regimes could result in duplicative sanctions and contradictory decisions, whether on the substance of whether a violation has occurred or on the appropriate sanction.[c]

10. In addition, a staff member would lack an effective recourse mechanism to challenge a sanction by a panel of the members of the Council. A staff member can challenge before the Dispute Tribunal a decision by the Secretary-General to enforce the obligations established in the Charter, the Staff Regulations and Rules and related administrative issuances. In contrast, under the regime proposed by the Council, there would not be any recourse mechanism to challenge a sanction by a panel of the Council members. Recourse to the Tribunals, even if it were to be included in the proposal of the Council, would raise concerns about the potential for conflicts of interest since it is a requirement for all judges of the Tribunals to have been recommended to the General Assembly by the Council (Dispute Tribunal statute, article 4.2 and Appeals Tribunal statute, article 3.2).

11. Furthermore, a single code of conduct for all legal representatives would ignore the significant differences among them. For a staff member, whether he or she is a legal representative of the Secretary-General, a legal officer of the Office of Staff Legal Assistance or a volunteer legal representative of staff, there exists an ongoing employment relationship as an international civil servant. Accordingly, such an individual has an interest in ensuring that his or her actions conform to standards of conduct that contribute to the successful operation of the administration of justice system. For an external individual, there is no ongoing employment relationship. For some external individuals, legal representation in the administration of justice system is a one-time engagement. Consequently, they may not have the same interest as staff members in ensuring that the administration of justice system operates effectively.

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[c] Authorities can disagree about the appropriate interpretation of the obligations of legal representatives, especially in a legal system that remains in its early years of operation. Such disagreements, for example, have already arisen between the Dispute Tribunal and the Appeals Tribunal. In Appeals Tribunal Judgement No. 2011-UNAT-121 (*Bertucci*), the Appeals Tribunal set aside Dispute Tribunal Judgement No. 2010/80 (*Bertucci*), which had included findings about the conduct of the legal representatives of the Secretary-General.

12. Given these differences, it is notable that other tribunals have decided not to adopt a single code of conduct for all counsel. In its proposal, the Council cites the Code of Professional Conduct for counsel in operation at the International Criminal Court. That Code, however, applies only to defence counsel, counsel acting for States, *amicus curiae* and legal representatives of victims and witnesses. It does not apply to prosecution counsel, whose conduct is separately governed by the Staff Rules of the International Criminal Court and the Regulations of the Office of the Prosecutor.

13. Lastly, in the view of the Secretary-General, a code of conduct for external individuals should be developed through a consultative process coordinated by the Office of Administration of Justice, which could consult on the preparation of a code of conduct with the legal representatives of the Secretary-General and of staff, the Tribunals and the Internal Justice Council.

14. It is also the view of the Secretary-General that the regulatory framework that governs the conduct of legal representatives who are staff members should include obligations that are substantially similar to those established in a code of conduct for legal representatives who are not staff members. Thus, following the preparation of the code of conduct, the Secretary-General would examine the existing legal regime for staff members acting as legal representatives and, as necessary, amend or supplement it through administrative issuances.

15. **In view of the foregoing, the Secretary-General recommends that the General Assembly (a) endorse the preparation of a code of conduct for legal representatives who are external individuals and not staff members, and (b) request the Office of Administration of Justice to coordinate the preparation of such code of conduct, in consultation with the legal representatives of the Secretary-General and of staff, the Tribunals and the Internal Justice Council.**

Annex IX

Compensation awarded by the Management Evaluation Unit, the Dispute Tribunal and the Appeals Tribunal

A. Monetary compensation awarded by the Management Evaluation Unit (1 January-31 December 2011)

Breakdown of compensation paid to staff members in 2011			
Department of decision maker	*Amount of compensation*	*Level of staff member*	*Reason for compensation*
Department of Field Support — UNMIK	7 months SPA to P-4	P-3	Decision to re-advertise P-4 post in UNMIK
Department of Field Support	Adm. to pay staff member $16,227.63 as follows: ($6,188.89 already paid to staff member, no further recovery will take place)	G-5	Compensation for miscalculations and legitimate expectation
Office of Internal Oversight Services (Vienna)	$1,044.89	P-3	Non-remuneration for the period 15 May to 16 July 2010 when staff member performed higher level functions
Department of Field Support	6 months net base salary	FS-4	Undue delay in initiating selection process upon reclassification of staff member's post to a higher level
Department of Field Support	16 days of DSA at half rate in UNTSO	FS-4	Failure to consider staff member's request for an exception
Department of Field Support — UNFICYP	Difference in salary between G-4 and G-5, a sum equivalent to €7,168	G-4	Failure to give full and fair consideration
Department of Field Support — UNMIK	€11,638.68	G-3	For legitimate expectation of continued appointment
Department of Field Support — UNMIK	€11,638.68	G-3	Legitimate expectation of continued appointment
Department of Field Support — UNMIK	€11,204.05	G-3	Legitimate expectation of continued appointment
Department of Field Support — UNMIK	€11,638.68	G-3	Legitimate expectation of continued appointment
Department of Field Support — UNMIK	€13,895.30	G-4	Legitimate expectation of continued appointment

Breakdown of compensation paid to staff members in 2011

Department of decision maker	*Amount of compensation*	*Level of staff member*	*Reason for compensation*
UN-Habitat	3 months net base salary	P-5	Compensation for promise of future employment
Department of Management	3 months net base salary	P-3	Significant negative effect on personal life and because litigation is not in the Organization's interest
Department of Management	1 month net base salary	G-4	Failure to consider staff member eligible for application to Professional category
Department of Field Support	1 month net base salary	G-4	Emotional distress due to withdrawal of accepted offer of appointment
Department of Field Support	1 month net base salary	G-3	Emotional distress due to withdrawal of accepted offer of appointment
Department of Field Support	1 month net base salary	G-3	Emotional distress due to withdrawal of accepted offer of appointment
Department of Field Support	1 month net base salary	G-3	Emotional distress due to withdrawal of accepted offer of appointment

B. Monetary compensation awarded by the Tribunals (1 January-31 December 2011)

United Nations Dispute Tribunal judgement No.	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/132	Geneva	UNOV	None	2011-UNAT-140	Two years education grant	€22,798.00	$33,136.63	5 Sept 2011
UNDT/2011/022	Geneva	UNOV	(i) 2 months net base salary; (ii) half-month net base salary	2012-UNAT-212	UNDT judgement affirmed	€10,731.62	$14,214.07	25 May 2012
UNDT/2011/035	Geneva	UNOV	€5,000	2012-UNAT-205	UNDT judgement affirmed	€5,008.46	$6,633.72	25 May 2012
UNDT/2011/036	Geneva	OHCHR	CHF 12 000	No appeal	No appeal	CHF 12,000	$14,962.59	3 Aug 2011
UNDT/2011/050	Geneva	UNCTAD	$10,000	No appeal	No appeal	N/A[a]	$10,000.00	6 May 2011
UNDT/2011/057	Geneva	UNHCR	(i) rescission or CHF 15,000; (ii) CHF 2,000	No appeal	No appeal	US$ 20,833	$20,833.00	20 Aug 2011
UNDT/2011/080	Geneva	MINUSTAH	one month net base salary (moral damage)	2012-UNAT-214	UNDT judgement affirmed	Unavailable	Unavailable	Unavailable
UNDT/2011/101	Geneva	UNOG/ UNHCR	CHF 1,500	Under appeal	Under appeal	N/A	N/A	N/A
UNDT/2011/127	Geneva	UNCTAD	$3,000	Under appeal	Under appeal	N/A	$1,500.00	7 Sept 2011
UNDT/2011/129	Geneva	OHCHR	7 months net base salary	Under appeal	Under appeal	N/A	$49 629.65	9 Sept 2011
UNDT/2011/132	Geneva	UNMIS	3 months net base salary	No appeal	No appeal	Unavailable	Unavailable	Unavailable
UNDT/2011/148	Geneva	OHCHR	(i) rescission or $8,000; (ii) $14,000	No appeal	No appeal	N/A	$14,000.00	14 Oct 2011
UNDT/2011/161	Geneva	UNEP/ UNON	€2,000	No appeal	No appeal	€2,000	$2,649.01	23 May 2012
UNDT/2011/201	Geneva	OHCHR	(i) rescission or two years net base salary and benefits and entitlements; (ii) 4 months net base salary	Under appeal	Under appeal	N/A	N/A	N/A
UNDT/2011/207	Geneva	UNICEF	(i) rescission or net base salary at G-6 level for 7 months; (ii) 2 months net base salary at G-7 level	No appeal	No appeal	Pakistan rupee 693,999.07	$7,333.00	7 Feb 2012

United Nations Dispute Tribunal judgement No.	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2011/017	Nairobi	UNHCR	(i) 6 months net base salary; (ii) special post allowance for 4 months; (iii) 6 months net base salary; (iv) salary and entitlements at G-6 level from June 2005 to December 2010	2011-UNAT-188	Upheld UNDT decision, but reduced monetary award to 2.5 years net base salary	Sierra Leonean Leones 44,430 000 Sierra Leonean Leones 50,515 281	$15,046.00 $12,246.00	18 Feb 2008 3 Dec 2010
UNDT/2011/020	Nairobi	UNON	2 months net base salary	No appeal	No appeal	KES 524,883	$6,304.90	5 May 2011
UNDT/2011/060	Nairobi	Secretariat (OIOS)	(i) 18 months net base salary; (ii) 6 months net base salary	2012-UNAT-210	Remanded to UNDT	N/A	N/A	N/A
UNDT/2011/067	Nairobi	UNHCR	(i) rescission and reinstatement or 2 years net base salary; (ii) 12 months net base salary	No appeal	No appeal	Egyptian £ 164 301	$27,660.06	10 Jul 2011
UNDT/2011/086	Nairobi	MONUC	2 months net base salary	No appeal	No appeal	N/A	$18,281.67	6 Oct 2011
UNDT/2011/092	Nairobi	Secretariat (DGACM)	(i) 2 months net base salary; (ii) 4 months net base salary; (iii) $500	No appeal	No appeal	N/A	$39,506.38	8 Jul 2011
UNDT/2011/131	Nairobi	UNHCR	(i) rescission or 2 years and 2 months net base salary at the P-4 level; (ii) 3 months net base salary	2012-UNAT-209	Vacated UNDT judgement. (No compensation to be paid.)	$0	$0	N/A
UNDT/2011/162	Nairobi	WFP	(i) rescission or lost earnings from the date of separation to the date of the judgement; (ii) 6 months net base salary	No appeal	No appeal	Unavailable	Unavailable	Unavailable
UNDT/2011/163	Nairobi	WFP	(i) rescission of separation decision or lost earnings from the date of separation to the date of the judgement; (ii) 6 months net base salary	No appeal	No appeal	Unavailable	Unavailable	Unavailable
UNDT/2011/192	Nairobi	ONUB	(i) Net base salary from 17 January 2008 to 23 June 2011 at the P-4 level, including restoration of pension benefits; (ii) 2 years net base salary at the P-4 level in lieu of reinstatement; (iii) 4 months net base salary at the P-4 level; (iv) 9 months net base salary; (v) repatriation allowance	Under appeal	Under appeal	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	Registry	Entity	Compensation awarded by United Nations Dispute Tribunal	United Nations Appeals Tribunal judgement No.	Compensation awarded by United Nations Appeals Tribunal	Net amount paid (local currency)	Net amount paid (United States dollars)	Date
UNDT/2011/202	Nairobi	UNDCP	$10,000	Under appeal	Under appeal	Unavailable	Unavailable	Unavailable
UNDT/2011/205	Nairobi	UNMEE	(i) Difference between the salary received and SPA granted from 1 September 2005 to end of the period which the SPA was granted; (ii) Compensation of 24 months net base salary; (iii) 9 months net base salary	Under appeal	Under appeal	Unavailable	Unavailable	Unavailable
UNDT/2011/218	Nairobi	MINURSO	4 months net base salary effective March 2007	Under appeal	Under appeal	Unavailable	Unavailable	Unavailable
UNDT/2011/004	New York	UNHCR	(i) $25,000 (excessive and inordinate delays and emotional harm sustained); (ii) monthly interest on all invoices the Medical Board considers to be outstanding	2012-UNAT-198	Upheld UNDT judgement	US$ 25,000	$25,000.00	27 Feb 2011
UNDT/2011/012	New York	UNICEF	$97,324.04	No appeal	No appeal	US$ 97,324.04	$97,324.04	30 Mar 2012
UNDT/2011/032	New York	UNFPA	(i) 6 months net base salary and entitlements; (ii) $8,000	2012-UNAT-201	Upheld award of $8,000 for moral injury; set aside award of six months' net base salary for economic loss	US$ 8,015.37	$8,015.37	1 June 2012
UNDT/2011/034	New York	Secretariat (DGACM)	$10,000	2012-UNAT-204	Vacated UNDT judgement.(No compen sation to be paid.)	$0	$0	N/A
UNDT/2011/068	New York	UNDP	(i) $89,128.48; (ii) $50,000;	No appeal	No appeal	US$ 139,369.48	$139,369.48	12 Apr 2011
			(iii) $241 + interest	No appeal	No appeal	US$ 10,122.41	$10,122.41	26 May 2011
UNDT/2011/081	New York	Secretariat (DM)	2 years net base salary	2012-UNAT-215	Reversed UNDT judgement, in part; compensation reduced to 10 months' net base pay	N/A	$96,664.42	8 Aug 2011

United Nations Dispute Tribunal judgement No.	Registry	Entity	Compensation awarded by United Nations Dispute Tribunal	United Nations Appeals Tribunal judgement No.	Compensation awarded by United Nations Appeals Tribunal	Net amount paid (local currency)	Net amount paid (United States dollars)	Date
UNDT/2011/084	New York	Secretariat (OPPBA)	$3,500	Under appeal	Under appeal	N/A	$3,500.00[b]	6 Jul 2011
UNDT/2011/085	New York	Secretariat (OPPBA)	$3,000	Under appeal	Under appeal	N/A	$3,000.00[b]	6 Jul 2011
UNDT/2011/094	New York	UNOPS	(i) 6 months net base salary; (ii) 3 months net base salary	2012-UNAT-219	Affirmed UNDT judgement	US$ 34 150	$34,150.00	1 Sept 2011
UNDT/2011/099	New York	Secretariat (DPI)	8 months net base pay	No appeal	No appeal	N/A	$43,651.26	12 Aug 2011
UNDT/2011/103	New York	UN Secretariat (DGACM)	Applicant #1: 1 year net base salary; Applicant #2: (i) 1 year net base salary; (ii) 3 months net base salary (depression)	Under appeal	Under appeal	N/A	$26,891.26[c]	7 Sept 2011
UNDT/2011/123	New York	UNMIS	2 years net base salary	No appeal	No appeal	N/A	$216,906.81[d]	10 Nov 2011
UNDT/2011/124	New York	UNMIS	4 months net base salary	No appeal	No appeal			
UNDT/2011/164	New York	UNFPA	3 months net base salary	No appeal	No appeal	BDT 337 412.76	$4,486.87	30 Oct 2011
UNDT/2011/169	New York	UNMIL	$60,000	No appeal	No appeal	N/A	$60,064.11	23 Nov 2011
UNDT/2011/182	New York	UNAMI	6 months net base salary	No appeal	No appeal	N/A	$35,203.00	22 Dec 2011
UNDT/2011/195	New York	UNHQ (DGACM)	(i) 9 months net base salary; (ii) $20,000	No appeal	No appeal	N/A	$53,975.59	6 Feb 2012
UNDT/2011/199	New York	UNICEF	(i) 9 months net base salary; (ii) 3 months net base salary; (iii) $1,500	No appeal	No appeal	US$ 79 458	$79,458.00	26 Jan 2012
UNDT/2011/219	New York	UNHQ (ITSD)	$40,000	Under appeal	Under appeal	N/A	N/A	N/A

[a] N/A signifies "not applicable".

[b] UNDT award had been paid to the staff member following issuance of the UNDT judgement.

[c] Two months net base salary had been paid to each of the two applicants following issuance of the UNDT judgement.

[d] Compensation awarded in judgements UNDT/2011/123 and UNDT/2011/124 was paid collectively.